6405. b. 7. (6)

THE

Arraignment, Tryal, and Condemnation

OF

Peter Cooke, Gent.

FOR

HIGH-TREASON,

IN

Endeavouring to procure FORCES from *France* to Invade this Kingdom, and Conſpiring to Levy WAR in this Realm for Aſſiſting and Abetting the ſaid *Invaſion*, in order to the Depoſing of His Sacred Majeſty, King *WILLIAM*, and Reſtoring the Late King.

Who upon full Evidence was found Guilty at the Seſſions-Houſe *in the* Old-Baily, *on* Wedneſday *the* 13*th of* May, 1696. *And received Sentence the ſame Day.*

With the Learned ARGUMENTS both of the King's and Priſoner's Council upon the new Act of Parliament for Regulating Tryals in Caſes of Treaſon.

Peruſed by the Lord Chief Juſtice *TREBY*, and the *Council* preſent at the Tryal.

LONDON:

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Die Sabbati Nono Maii Anno Domini, 1696. *Annoque Regni* Gulielmi *Tertii, Octavo.*

At the Seſſions-Houſe in the *Old-Baily*, *London.*

Dominus Rex Verſus *Petrum Cook.*

THIS day being appointed for the Tryal of Mr. *Peter Cook*, upon an Indictment of High Treaſon found againſt him by the Grand Jury for the City of *London*, upon the Commiſſion of Goal-Delivery of *Newgate*, holden for the ſaid City, upon which Indictment he had been Arraigned, and upon pleading not guilty, Iſſue had been joyned, and the Court having been adjourn'd unto this day for the Tryal for publick Proclamation in uſual manner, the Court was reſumed, and the Names of the Men returned to ſerve on the Jury, having been called over according to the Pannel, and the Defaulters recorded; the Court proceeded as follows.

Cl. of Arr. Set *Peter Cook*, the Priſoner, to the Bar: (*Which was done.*) You the Priſoner at the Bar, thoſe Men that you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Tryal of your Life and Death; if therefore you will Challenge them, or any of them, your time is to ſpeak to them as they come to the Book to be ſworn, and before they be ſworn.

Cook. Sir, I deſire you would not Name them too faſt, for my Eyes are very bad.

Cl. of Arr. John Ewer.

Cook. Who muſt I apply my ſelf to, Sir? I deſire to know, Whether he is a Freeholder in *London?*

Cl. of Arr. I know nothing to the contrary, Sir, he is returned as ſuch by the Sheriff; you had beſt ask him himſelf, he can beſt tell.

Cook. Are you a Freeholder in *London*, Sir?

Mr. *Ewer.* Yes, Sir, I am a Freeholder.

Cook. Sir, I challenge you.

Cl. of Arr. Henry Sherbrook.

Cook. Sir, are you a Freeholder in *London?*

Mr. *Sherbrook.* Yes, Sir, I am.

Cook. I challenge you. —— No, Sir, I beg your Pardon, I do not challenge you.

Cl. of Arr. Then hold Mr. *Sherbrook* the Book: (*Which was done.*) Look upon the Priſoner: You ſhall well and truly try and true Deliverance make between our Sovereign Lord the King, and the Priſoner at the Bar, whom you ſhall have in Charge, according to your Evidence, So help you God.

Cl. of Arr. Joſeph Billers.

Cook. Are you a Freeholder, Sir, in *London?*

Mr. *Billers.* Yes, I am.

Cook. I challenge you, Sir.

Cl. of Arr. John Brand.

Cook. Pray, Sir, don't go too faſt; Are you a Freeholder in *London*, Sir?

Mr. *Brand.* I am no Freeholder in *London.*

L. C. J. Treby. What ſay you, Mr. *Attorney?*

Mr. *Att. Gen.* My Lord, I would not have any body that is not a Freeholder ſerve; ſo he was ſet by.

Cl. of Arr. William Hall.

Mr. *Hall.* My Lord, I am no Freeholder in *London.*

L. C. J. Treby. Why, what Eſtate have you?

Mr. *Hall.* What I have, is in Leaſes.

L. C. J. Treby. What, Leaſes for Years, or Leaſes for Lives?

Mr. *Hall.* Leaſes for years, Sir.

L. C. J. Treby. Then he cannot ſerve upon the Jury.

Cl. of Arr. Edward Leeds.

Cook. Hold, Sir, let me ſee; are you a Freeholder in *London*, Sir?

Mr. *Leeds.* Yes, Sir.

Cook Sir, I challenge you then.

Cl. of Arr. Thomas Clark.

Cook. Hold, Sir, I pray let me look upon my Paper. I challenge him.

A Stander by. He does not appear.

Cl. of Arr. Nathan Green.

Cook. Where is he, Sir? Are you a Freeholder?

Mr. *Green.* Yes, I am, Sir.

Cook. I challenge you.

Cl. of Arr. Thomas Emes.

Cook. Are you a Freeholder, Sir?

Mr. *Emes.* Yes, I am.

Cook. Were you one of Sir *John Friend*'s Jury?

Mr. *Emes.* Yes, I was.

Cook. Then I challenge you for Cauſe, and I give you my Reaſon.

Mr. *Serj. Darnall.* I pray, let us hear your Reaſon; give your Reaſon for your challenge.

Cook. It is for being of Sir *John Friend*'s Jury.

Mr. *Serj. Darnall.* Then you challenge him for Cauſe:

Cook. Yes, that he was of Sir *John Friend*'s Jury.

L. C. J. Treby. Well, Brother *Darnall*, how is that a Cauſe of Challenge? You are the Priſoner's Council, let us hear what you ſay to it.

Mr. *Serj. Darnall.* My Lord, what we have to ſay to it, is this; Here are ſome Perſons returned upon this Pannel, that were formerly Jurors in a Cauſe that was try'd for the ſame Species of Treaſon that this Gentleman, the Priſoner, is charged with in this Indictment; and I think the Witneſſes at that Tryal did mention in their Evidence my Client, as being preſent at thoſe very Conſults, about which they gave their Evidence; theſe Gentlemen gave Credit to thoſe Witneſſes, and found the Verdict againſt the Perſon then accuſed. We humbly ſubmit it to your Lordſhip and the Court, whether we may not for this Cauſe challenge this Perſon as not indifferent, it being for the ſame Cauſe and Conſult, that the other was try'd for.

Mr. *Att. Gen.* Sure Mr. *Serjeant* is not in earneſt in this Objection.

Mr. *Serj. Darnall.* My Client thinks it a very good Objection, That he is not indifferent, and I deſire he ſhould be ſatisfied in it.

Mr. *Att. Gen.* If he thinks ſo, he may except againſt him, but if he inſiſts upon it as a cauſe of Challenge, we deſire you would put the Caſe, and my Lords the Judges determine it.

Mr. *Serj. Darnall.* I have told you what the Caſe is.

L. C. J. Treby. But you hear the King's Counſel inſiſt upon it, to have you make it out in point of Law.

Mr. *Serj. Darnall.* My Lord, I have ſtated the Caſe as my Client deſired, and we ſubmit it to you.

L. C. J. Treby. Well, there is nothing in it.

Mr. *Serj.*

Mr. *Serj. Darnall.* Then my Client, if he will not have him ſerve, muſt challenge him peremptorily; Which he did.

Cl. of Arr. Francis Byer.

Cook. Sir, Are you a Freeholder?

Mr. *Byer.* Yes, I am.

Cook. I challenge you.

Cl. of Arr. James Denew.

Mr. *Denew.* I am no Freeholder.

Cl. of Arr. Henry Hunter.

Cook. Hold, hold, my Lord, I challenge him as being one of Sir *John Freind*'s Jury.

Mr. *Baker.* Nay, that was not allowed in Mr. *Emes*'s Caſe; but you challenged him peremptorily, and ſo you muſt now, if you have a mind to it.

Cook. I challenge him.

Cl. of Arr. John Hall.

Cook. Are you a Freeholder in *London*, Sir?

Mr. *Hall.* Yes, I am, Sir.

Cook. I challenge you.

Cl. of Arr. John Cullum.

Cook. Sir, Are you a Freeholder in *London?*

Mr. *Cullum.* Yes, Sir.

Cook. I challenge you.

Cl. of Arr. John Cox.

Mr. *Cox.* My Lord, I am no Freeholder in *London.*

Cl. of Arr. John Hedges.

Cook. Hold, I pray, Sir, let me look upon my Paper; Sir, Are you a Freeholder in *London?*

Mr. *Hedges.* Yes, Sir, I am.

Cook. I challenge you.

Cl. of Arr. Thomas James.

Mr. *James.* My Lord, my name is not *Thomas.*

Mr. Sh. Buckingham. He is returned, it ſeems, by a wrong name; we did not know it.

Mr. Serj. Darnall. Then you cannot ſwear him.

Cl. of Arr. Thomas Poole.

Cook. Are you a Freeholder in *London*, Sir?

Mr. *Poole.* Yes, Sir.

Cook. I challenge him, as being of Sir *John Friend*'s Jury.

Mr. Att. Gen. That has been over-ruled already.

Cook. I challenge him.

Cl. of Arr. Peter Parker.

Cook. Are you a Freeholder in *London?*

Mr. *Parker.* Yes, Sir, I am.

Cook. I challenge you, Sir, as being one of Sir *John Friend*'s Jury.

Mr. *Baker.* Nay, you can't offer it again.

Cook. I challenge him.

Cl. of Arr. George Grove.

Cook. Where is he? Are you a Freeholder in *London*, Sir?

Mr. *Grove.* Yes, Sir.

Cook. I challenge you.

Cl. of Arr. Nathanael Wyerſdell.

Cook. Are you a Freeholder in *London?*

Mr. *Wyerſdell.* Yes, Sir, I am.

Cook. I challenge you, Sir.

Cl. of Arr. Samuel Blewit.

Cook, Hold, pray, Are you a Freeholder, Sir?

Mr. *Blewit*. Yes, I am.

Cook. I challenge him.

Cl. of Arr. John Wolfe.

Cook. I challenge him.

Cl. of Arr. Joseph Wolfe. He did not appear, and was ſaid to be no Freeholder.

Cl. of Arr. William Smith.

Cook. Are you a Freeholder, Sir?

Mr. *Smith*. Yes, I am.

Cook. Sir, I challenge you.

Cl. of Arr. Edward Fenwick.

Cook. Are you a Freeholder, Sir?

Mr. *Fenwick*. Yes, Sir, I am.

Cook. I do not challenge him.

Cl. of Arr. Then ſwear Mr. *Fenwick*. (Which was done.)

Benjamin Hooper.

Cook. Stay, Sir, pray ſtay a little, where is he?

Cl. of Arr. There he is, Sir.

Cook. Which is the Gentleman? Are you a Freeholder in *London*, Sir?

Mr. *Hooper*. Yes, Sir.

Cook. I challenge you.

Mr. *Hooper*. I thank you, Sir.

Cl. of Arr. Nathanael Long.

Cook. Are you a Freeholder, Sir?

Mr. *Long*. Yes, Sir.

Cook. I challenge him, as being of Sir *John Friend*'s Jury.

Cl. of Arr. The Court has adjudged that no cauſe of Challenge, therefore I take no notice of it, but as a peremptory Challenge.

Cl. of Arr. Richard Chiſwell.

Cook. Are you a Freeholder in *London*, Sir?

Mr. *Chiſwell*. Yes, Sir.

Cook. I challenge you.

Cl. of Arr. John Child.

Cook. Hold, pray, a moment; I have not croſt theſe laſt in my Paper, but I challenge this man, being of Sir *John Friend*'s Jury.

Mr. *Baker*. You have had that anſwer'd over and over again, as no objection; it is nothing but a peremptory challenge.

Cl. of Arr. William Walker.

Mr. *Walker*. I was one of Sir *John Friend*'s Jury.

Cook. I challenge him for the ſame Reaſon.

Mr. Att. Gen. But that is no Reaſon at all.

Cook. Then I challenge him.

Cl. of Arr. John Wells.

Cook. Sir, Are you a Freeholder?

Mr *Wells*. Yes, Sir, I am.

Cook. Sir, I challenge you.

Cl. of Arr. John Hibbert.

Cook Which is he, Sir?

Cl. of Arr. He ſtands upon your left hand; the Man in the Black Peruke.

Cook. Are you a Freeholder, Sir?

Mr. *Hibbert*. Yes, I am, Sir.

Cook. I challenge him.

Cl. of Arr. Daniel Wray.

Cook. Stay, Sir, are you Mr. *Wray*?

Mr. *Wray*.

Mr. *Wray*. Yes, Sir, my Name is *Wray*.

Cook. Are you a Freeholder in *London*, Sir?

Mr. *Wray*. Yes, Sir.

Cook. I challenge you.

Mr. *Wray*. I thank you, Sir.

Cl. of Arr. *John Pettit*.

Cook. Which is he?

Mr. *Pettit*. I am the man, Sir.

Cook. Are you a Freeholder in *London*, Sir?

Mr. *Pettit*. Yes, Sir.

Cook. I challenge you.

Cl. of Arr. *John Sherbrook*.

Cook. I challenge him, as being one of Sir *John Friend*'s Jury.

Mr. *Baker*. But you have heard that denied to be an Exception over and over.

Cook. I challenge him.

Cl. of Arr. *Stephen Blackwell*.

Cook. Are you a Freeholder, Sir?

Mr. *Blackwell*. Yes, I am.

Cook. I challenge you.

Cl. of Arr. *William Hatch*.

Cook. Pray give me time to mark them; pray, who is this man you now call?

Cl. of Arr. *William Hatch*.

Cook. Sir, Are you a Freeholder?

Mr. *Hatch*. Yes, I am.

Cook. Sir, I challenge you.

Cl. of Arr. *Henry Beadle*.

Cook. Are you a Freeholder, Sir?

Mr. *Beadle*. Yes, I am.

Cook. I do not except againſt him. (He was ſworn.)

Cl. of Arr. *John Stredwick*.

Mr. *Stredwick*. My Lord, as I apprehend, I am no Freeholder.

L. C. J. Treby. Why do you apprehend ſo?

Mr. *Stredwick*. It is my Wife's Eſtate, not mine.

Cl. of Arr. Then your Wife has a Freehold, it ſeems.

Mr. *Stredwick*. Yes, ſhe has.

L. C. J. Treby. That is Freehold enough; for you have an Eſtate for your Wife's Life.

Mr. *Baker*. And after that too, for it is not given over to any Body elſe, and ſhe won't give it from him.

Cook, Sir, are you a Freeholder in *London* or no?

Mr. *Stredwick*. I apprehend, Sir, I am not.

Mr. *Baker*. He ſays he has an Eſtate for his Wife's Life.

Cl. of Arr. Then he is a Freeholder, What do you ſay to him?

Cook. Are you poſitive you are a Freeholder in *London* upon your Word?

Mr. *Stredwick*. I think not.

Mr. *Baker*. Why, your Wife's Eſtate is your's for your life.

Cook. My *Lord Chief Juſtice*, if your Lordſhip pleaſes, here is a man that ſays poſitively he thinks he is no Freeholder, I deſire your Lordſhip's Judgment, Whether he be a Freeholder or not?

L. C. J. Treby. Why, let him put his Caſe, if he make a doubt of it.

Mr. *Stredwick*. I am not poſſeſt of any Eſtate my ſelf.

L. C. J. Treby. But is not your Wife an Inheritrix?

Mr. *Stredwick*. Yes, my Lord, ſhe is.

L. C. J. Treby. Then you are ſeized of a Freehold in her right; and, Mr. *Cook*,

your own Council will tell you and satisfy you, that that is a Freehold sufficient for this service.

Mr. *Baker*. His Wife's Father settled it upon her and her Heirs.

L. C. J. Treby. No question, it is a sufficient Freehold if the Wife be living.

Mr. *Baker*. Yes, she is.

Cook. I challenge him.

Cl. of Arr. William Prince.

Cook. I challenge him, as being of Sir *John Friends* Jury.

Mr. *Prince*. I thank you, Sir.

Cl. of Arr. John Simmons.

Mr. *Att. Gen.* We challenge him for the King.

Cl. of Arr Robert White.

Cook. Are you a Freeeholder, Sir.

Mr. *White*. Yes, I think so.

Cook. Pray tell me whether you are, or not.

Mr. *White*. Indeed I think so, Sir.

Cook. I challenge him.

Cl. of Arr. Edward Brewster.

Cook. Where is Mr. *Brewster*? Are you a Freeholder, Sir, in *London*?

Mr. *Brewster*. Yes, Sir.

Cook. I challenge him. Pray Sir, I desire to know how many I have challenged.

Mr. *Baker*. You have challenged Thirty three.

Cook. How many besides those that are of Sir *John Friend*'s Jury?

Mr. *Baker*. You have but Two more to challenge, Sir.

Mr. *Serj. Darnall*. I thought you had heard the Opinion of the Court, Mr. *Cook*, that it will not hold as a cause of challenge that he was of Sir *John Friend*'s Jury, therefore those are all reckoned among the peremptory challenges, and you can challenge but Two more in all.

L. C. J. Treby. Not without cause, but as many more as you can have good cause against.

Cl. of Arr. John Reynolds.

Cook. I except not against him. (He was sworn).

Cl. of Arr. Joseph Brookbank.

Cook. I have nothing to say to him. (He was sworn).

Cl. of Arr. Adam Bellamy.

Mr. *Bellamy*. My Lord, I am no Freeholder.

L. C. J. Treby. Why, what Estate have you?

Mr. *Baker*. He has Estate enough, I know, for value.

Mr. *Bellamy*. I have only a Lease.

L. C. J. Treby. A Lease for years?

Mr. *Bellamy*. Yes, my Lord.

Cl. of Arr. David Grill.

Mr. Grill. I am no Freeholder, my Lord.

Cl. of Arr. William Rawlins.

Cook. I accept of him. (He was sworn).

Cl. of Arr. Samuel Roycroft.

Cook. Are you a Freeholder, Sir?

Mr. *Roycroft*. Yes, Sir.

Cook. I challenge him.

Cl. of Arr. Thomas Parker.

Cook. How many have I to challenge, do you say?

Cl of Arr. But one Sir; What say you to Mr. *Parker*?

Cook. I do not except against him. (He was sworn).

Cl. of Arr. James Robinson.

Cook.

Cook. I have nothing to ſay to him. (He was ſworn.)

Cl. of Arr. Joſeph Morewood.

Cook. I challenge him.

Mr. *Baker.* You have challenged all your number now.

Cl. of Arr. My Lord, we have gone through the Pannel, we muſt now call the Defaulters again. *Thomas Clark.*

Mr. *Clark.* Here.

Sir *B. Shower.* Was he here when he was called over?

Mr. *Att. Gen.* That's nothing, he is here now.

Sir *B. Shower.* But if there be a Default of the Jury, and the King's Council have challenged any one, they ought to ſhew their Cauſe; therefore we deſire that they may ſhew their Cauſe why they challeng'd Mr. *Simmons.*

L. C. J. Treby. The King has power to Challenge without ſhewing Cauſe till the Pannel be gone through; but if there be a Default of Jurors when the King challenges, the King's Council muſt ſhew cauſe.

Sir *B. Shower.* Here is a Default of Jurors, my Lord.

L. C. J. Trebr. No body is Recorded abſolutely a Defaulter, if he comes in time enough to be ſworn.

Cl. of Arr. Swear Mr. *Clark.* (Which was done).

L. C. J. Treby. When there is an apparent default of Jurors, then they muſt ſhew their Cauſe; but here his appearance, it ſeems, was Recorded, and ſo he was no Defaulter; and you might have challenged him for Cauſe ſtill.

Cl. of Arr. James Dry.

Mr. *Dry.* My Name is not *James.*

Serj. Darnall. Then you cannot ſwear him: Here are three miſtaken in their Names.

L. C. J. Treby. That is in the Copy in your Brief, Brother, it may be.

Mr. *Serj. Darnall.* No, my Lord, the Officers admit it.

Mr. *Att. Gen.* My Lord, we deſire thoſe Gentlemen, that ſay they are no Freeholders, may be ſworn to that matter. (Which was accordingly done.) And ſeveral of them that had ſtaid, did deny the having of any Freehold upon Oath, and ſome were gone away.

L. C. J. Treby. Pray take care to eſtreat the Iſſues, and return greater Iſſues the next time.

Mr. *J. Rokeby.* Truly the Court muſt put ſome great penalty upon them for trifling with the Court in reſpect of their Duty that they owe to the King and Country, in regard of their Eſtates.

Cl. of Arr. Pray, let the Officers be called who ſummoned this Jury, Mr. *Sheriff.*

(Which was done.) And they examined concerning their ſummoning thoſe who made Default, and the Iſſues of thoſe who were recorded as Defaulters were ordered to be Eſtreated.

Then the Court not being able to proceed for want of a Jury, they ordered another Pannel to be ready againſt *Wedneſday* next, to which time at Seven in the Morning, the Court was by Proclamation adjourned.

Die

Die Mercurii Decimo Tertio Maii, Anno Dom. 1696.

The Court being met according to the Adjournment, the Pannel was called over, and the Defaulters Recorded, and ſeveral excuſed for Abſence upon Sickneſs, and being out of Town before the Summons. Then Mr. Serjeant Darnall *deſired before the Jury was called, to move ſomething againſt the Pannel: And made his Motion thus;*

Mr. *Serj. Darnall.* IF your Lordſhip pleaſes, I have ſomewhat to offer to you before you go upon this new Pannel; and I confeſs, I think it is my Duty to the Court, as well as to the Priſoner, to ſtate the Caſe as it is, and ſubmit it upon the reaſon of Law, and the Authorities that I ſhall offer, Whether the Proceedings upon this new Pannel will not be erroneous? My Lord, the Queſtion is, Whether, as this Caſe is, the Priſoner has had a Copy of the Pannel of his Jury by which he is to be tried, according as the *late Law* requires, he had a Copy of the former Pannel, and upon that Pannel Nine were ſworn, and their Names all entred upon Record, and made Parcel of the Record. Thereof now the Queſtion is, Whether he can be tried upon a new Pannel? We are in a Caſe that rarely happens, and in a Caſe of Life and Death. I know your Lordſhip will be careful not to vary from the ancient Practice, or to make a new Preſident, becauſe of the Conſequences. It muſt be agreed in this Caſe, That the old Pannel upon which the Priſoner took his Challenges, and of which Nine was ſworn, is Parcel of the Record. Now, my Lord, to add a new Pannel, upon which twelve more ſhall be ſworn, and all this appear upon Record, and the Priſoner tried upon the laſt Pannel, will not this be Error? I offer this before the Jury be called and ſworn, becauſe we deſire to be fairly tried; and we deſign to reſt upon the Fact in this Caſe. If it ſhould appear, That he is tried upon a Pannel that is unduly made and return'd, that will be of evil Conſequence one way or other. And can this be duly made, if another appear upon Record before it? And can any body ſay it is quaſht or abated? Or can it be ſo? My Lord, in *Stamford*'s Pleas of the Crown, p. 155. it is ſaid, *If any of the Pannel dye after the Return, and before their Appearance, ſo that there are not enough left to make the Jury, yet the Pannel ſhall not be quaſht, nor is it abated, but it is Cauſe to grant a* Tales. And certainly, my Lord, it is a ſtronger Caſe, when by reaſon of Challenges, which the Law gives the Priſoner liberty to make, there are not enough left, that there ſhall not be a new Pannel, but that a *Tales* ſhall be granted; for if a new Pannel might be made, it cannot appear who were challenged, or who were admitted. And if your Lordſhip pleaſes to conſider the Intention of the Law in giving the Priſoner power to Challenge, is, that he may have an indifferent Jury; but that would be prevented by ſuch a practice as this; for when it has been diſcovered upon the old Pannel whom the Priſoner choſe, and whom he challenged upon the new Pannel, the Perſons challenged may be ſet firſt, and thoſe that were choſen may be omitted, or ſo poſtponed, that none of them whom he thought equal to try him, can ſerve upon the Jury. And truly, my Lord, if I am rightly informed, that is the Caſe upon this new Pannel, ſome of thoſe that were admitted and ſworn are left out, and moſt of them, I think, are put laſt in the Pannel whom he thought equal Men to try him, and all thoſe whom he challenged peremptorily, are the firſt Men in the Pannel. This, my Lord, is the Caſe before you, and if this be admitted, the uſe and end of Challenges, which are in be-

nefit

benefit and ſavour of Life wou'd be defeated. And for Authorities in this Caſe, beſides the Reaſon and Ground of the Law, many cannot be expected, becauſe it is a Fact that rarely happens. I find none of the ancient Practicers ever knew it, but I find that a *Tales* ought to be granted, ſo it is ſaid in ſeveral Books, as in *Stamford*, 155. 156. when ever upon the principal Pannel, all the Jury does not appear, or ſo many of them do not, that there are not enough left to make a Jury, which is our very Caſe; then in ſuch Caſe the Pannel ſhall not be quaſht or abated; but a *Tales* granted, ſo is 14 *H.* 7. 7. there the Queſtion was, Whether there ſhould be a greater Number returned upon the *Tales* then were in the principal Pannel, and there the Difference was inſiſted upon, and agreed, That where it is between Party and Party, where Life is not concerned, it ſhall not, but where Life is concerned, and the Priſoner has Power to Challenge 35 Peremptorily, there the Judge may award as many upon the *Tales* as he pleaſes, that there may be enough to remain after the Challenges; ſo that if this old Pannel be not abated, and cou'd not be quaſht, and a *Tales* might be granted to conſiſt of any Number, I conceive the Priſoner cannot be Tryed upon this new Pannel, but it will be Erroneous; and I humbly ſubmit to your Lordſhips, whether you will proceed upon it.

Sir *B. Shower*, If your Lordſhip pleaſes to ſpare me a Word of the ſame ſide, with Submiſſion, We think there ought to have been an *Habeas Corpora*, with a *Tales*, ſuch as had been before Sworn, being to be part of the Jury now, and that is the proper way to bring the Priſoner to his Tryal in this Caſe; the Kings Counſel cannot expect we ſhou'd produce many Preſidents, for I believe this is the ſecond of the kind that ever happened, at leaſt, within Memory, That a Tryal in Treaſon was put off *pro defectu Juratorum*, though I have a Preſident that I think is expreſs in the Caſe; but we inſiſt in the firſt place, That a *Tales* does lie at Common-Law, in the Caſe of Life; and ſo the Book that Mr. *Serjeant* cited in *Stamford*, is expreſs; and then we ſay, that the Anſwer which we expect, that we are now before Juſtices of Goal Delivery, is not ſufficient, becauſe the Juſtices of Goal-Delivery, though they do not uſually award Proceſs by way of Writ, but before their coming, they Command the Sheriff to have his County ready there, and ſo in Fact, it is a Parol Precept; yet when it is return'd, then it is entred upon Record, either *Preceptum eſt Vice Comiti quod venire faceret*; or, *Ideo veniat Jurata*; and the Jury are entred upon Record: So that take it to be before Juſtices of Goal-Delivery, yet the Sheriff having returned a Pannel, and that being upon the File, as appears before your Eyes, in Obedience to your Command, and that Copy of the Pannel being delivered to us two Days before *Saturday* laſt, we humbly ſubmit it to your Lordſhip, Whether by force of the Common-Law, and of the late Act of Parliament, we ought not to be Tryed by that Pannel; we inſiſt upon it, that the Act intends, and expreſly deſigned, that not only the Priſoner ſhou'd have a Copy of the Pannel that the Sheriff return'd at any time after, but that he ſhou'd be Tryed by the Pannel that we had a Copy of at firſt; for it is not ſaid a Copy, *toties quoties* the Court ſhall think fit to award a Precept for a new Pannel, but the Words of the Act are a Copy of the Jury duly returned by the Sheriff; now this we had, and your Lordſhip knows it is not a return'd Pannel till it be in Court, and then it becomes part of the Record: My Lord, I do agree the Juſtices in ſome Caſes have quaſht and ſet aſide Pannels and Juries, and ordered new ones; and I confeſs there was an extraordinary Caſe in the time of King *Charles* the Second, which was upon the Indictment againſt *Whitebread*, where, after the Jury Charged, and Evidence given, the Jury was diſcharged, and a new Pannel made the next Seſſions, upon which *Whitebread* was Tryed and Convicted; how juſt or regular that was, I will not inſiſt upon

now, but I am ſure there were great Complaints of that Practice, and few Preſidents can be ſhewn of the like; but beſides the Parties themſelves waved it there, no Objection being taken againſt it, but we inſiſt upon it in this Caſe, that this being upon Record, is part of the Record, and ſo appears to the Court; if the Record indeed were to be made up upon a Writ of Error, perhaps it wou'd be no Error. Becauſe it may be they wou'd leave it out; but here it appears there was a Pannel of Record before you, and this muſt either be quaſht, or altered, or continued on by Proceſs, you have power to quaſh it, if it be unduely returned by the Sheriff. If there be any evil Practices for procuring the Pannel, either by the Proſecutor, or the Priſoner, if there be no Freeholders return'd, or the ſame happen in any other reſpect not to be legally done according to the Command or Precept of the Court; but becauſe there is a Default of appearance of Jurors, no Pannel was ever quaſht upon that Account; then ſay we, if it be not quaſht, this Pannel muſt continue. For, what ſhall become of it, why ſhould it not continue? It is not within the Act of Parliament, that gives the Juſtices Power to make a new Pannel, as in the Caſe of a grand Jury, when they are guilty of Concealments, or refuſe to find Bills upon great Evidence, but we have no ſuch Caſe before you, nor do I know any ſuch Rule as can reach this; ſo that we take it, there is no difference between this Caſe, as before Juſtices of Goal-Delivery, and other Juſtices; that Proceſs does lie againſt the Jury that does not appear even in Treaſon and Felony, there is no Diſpute, and it is very properly ſo, if it be before Commiſſioners of *Oyer* and *Terminer*; firſt a *Venire facias*, and then upon Default, a *Habeas Corpora*, that is the proper way; then take it before Juſtices of Goal-Delivery, there it is entered upon Record, *Preceptum eſt Vice Comiti*, &c. And here is a Pannel returned by vertue of this Precept, and ſome of the Jury do not appear, and ſo there are not enough to Try the Priſoner after a great many Sworn and Challenged, and this entered upon Record. What ſhall become of that Pannel, it cannot be quaſht, nor abated? My Lord, there is a Caſe that does Warrant that Opinion of a *Tales* in a Caſe of Felony; and if there may be a *Tales*, then there may be an *Habeas Corpora*, and there are Directions how the Jurors ſhall be Sworn again, upon their appearance on the *Habeas Corpora*; and that is *Wharton's* Caſe in *Telverton*, 23.

Mr. *J. Powell*, Jun. Do not diſpute that, it is plain, That a *Tales* does lie in Felony, upon a Commiſſion of *Oyer* and *Terminer*; but can you ſhew me, Sir *Bartholomew*, any where, that upon a Commiſſion of Goal-Delivery a *Tales* does lie?

Sir *B. Skower*, Sir, I can only ſhew the Reaſon of the Law, and I cannot find that does contradict what we now contend for.

Mr. *J. Powell*, I tell you Sir *Bartholomew*, there is no *Tales* but with a *Habeas Corpora* to bring in the firſt Jurors, and that cannot be upon a Parol Precept on a Commiſſion of *Oyer* and *Terminer*, there goes a *Venire facias*, which is a Writ upon which the *Habeas Corpora* may be grounded, but there is no *Venire facias* upon a Commiſſion of Goal-Delivery.

Sir *B. Skower*, Why ſhou'd there not be a Precept in nature of an *Habeas Corpora* for a Jury return'd, upon a Precept as well as on a Writ?

Mr. *J. Powell*, No, it never was done, the Commiſſion of Goal-Delivery is a general Commiſſion that does Authorize the Sheriff to impannel, and have a Jury ready at the day appointed, for the Delivery of the Goal, to Try the *Priſoners*; it doth import in it ſelf a general *Precept* for that purpoſe, before Iſſue joyned, which the Sheriff cannot do in the Caſe of a Commiſſion of *Oyer* and *Terminer*, but muſt have a Writ of *Venire facias*, after Iſſue joyned.

Mr. *Sol.*

Mr. *Sol. Gen.* In all the Caſes that they cite, there is a Writ of *Venire facias*, upon which the after Proceſs, by Writ, may be grounded; but here is no Foundation for any future Proceſs by Writ, becauſe it is only by Parol Precept.

Mr. *Att. Gen.* Sure theſe Gentlemen don't think what they ſay, the Pannel is not part of the Record, and there is no Record of it, nothing but the Clerks Entry in a Paper, or Note, for his own *Memorandum*.

Mr. *J. Rokeby*, Brother *Darnal*, have you any Book that ſays, Juſtices of Goal Delivery muſt award a *Tales* upon default of the Jurors.

Mr. *Serj Darnal*, No my Lord, I cannot ſay ſo.

L. C. J. Treby, Suppoſe all the Jury had been challenged, or dy'd.

Mr. *J. Powell*, there cou'd be no quaſhing of it, but it wou'd fall of it ſelf, for want of a Jury.

Mr. *J. Rokeby*, If, according to your Doctrine, we muſt keep to the firſt Pannel, the Conſequence wou'd be, there wou'd be no Tryal at all.

Sir *B. Shower*, *Stamford* makes no difference that I can ſee.

Mr. *Att Gen.* But theſe Gentlemen have been told the difference, upon which this Matter is grounded, a *Tales* cannot be without a *Habeas Corpora*, and a *Habeas Corpora* cannot be without a *Venire facias*, but a Commiſſion of Goal Delivery cannot award a *Venire facias*, becauſe that is not to be awarded till Iſſue joyned.

Mr. *B Powis*. The return of this Pannel before Juſtices of Goal-Delivery, is an Act of the Sheriff, by vertue of the Commiſſion, and nothing appears of Record till the Jury are Sworn.

Mr. *J. Rokeby*, They object that it is upon Record

L. C. J. Treby. By the Record, they mean the Clerk's Note.

Mr. *Att Gen.* If you pleaſe to look upon the Indictment, there is no Entry at all, and that is all the Record before you

Mr. *J. Powe'l*, Does it appear upon Record. that Nine were Sworn.

Mr. *Baker*, No, there is nothing upon the Record.

C. of Arr. It does not appear till the Record is made up, and nothing is entered till Twelve are Sworn.

Mr. *Serj. Darnal*, There will be a great inconvenience, if a Pannel may be changed at any time.

Mr. *J Powel*, This is a Caſe that never happened before, and may be never may again.

Sir *B. Shower*, The Law will hold the ſame, in caſe it does appear upon Record, as well as where it does not; but we ſay, a Pannel return'd in Court is a Record.

Mr. *J. Powell*, No, it will not, becauſe, when a Jury does appear, and the Twelve are ſworn, then it becomes parcel of the Record; and therefore *Whitebread's* Caſe was quite another Caſe, and was indeed held to be an extraordinary Caſe, but that comes not up to this, for there a full Jury was Sworn, and Evidence given.

Mr. *Serj. Darnal*, It may be the ſame Jury will not be returned.

Mr. *J. Powell*. But if you have a Copy of the Jury, you are at no Miſchief.

Mr. *Serj. Darnal*, Some that were in the former Pannel are quite left out.

Mr. Sher. *Buck*. There are none left out, but what were not Freeholders, that I know of.

Mr. *B. Powis*, He ſays the Fact is not true as you have alledged it.

Mr. Sher. *Buck*. And Mr. *Serjeant Darnal* has been pleaſed to reflect upon us, as if we had packt this Jury, by altering the places of the Names, which,

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my Lord, we do utterly deny, and we only left out thoſe that were not Free-holders.

Mr. *B. Powis.* The Sheriff ſayes he has not poſtponed any of them, and only left out thoſe, that were not Free-holders.

Mr. *Ser. Darnal.* If the Law were as plain with us as the Fact in that Caſe, we ſhould have a very good Caſe of it.

Mr. Sher. *Buckingham.* Mr. Serjeant I have both the Pannels here, they may be compared.

Mr. *Ser. Darnal.* I ſaid no harm, Mr. Sheriff, nor meant any Reflection upon you.

Mr. Sher. *Buckingham.* Mr. Serjeant was pleaſed to ſay, the excepted men were put in the Front, and thoſe that were ſworn were put laſt.

L. C. J. Treby. There is nothing at all in the Objection.

Mr. *J. Powel.* Really, becauſe it was opened as a Reflection, it will be proper for the Sheriff to clear it.

Mr. Sher. *Buckingham.* My Lord, the anſwer I give to it, is, that particularly one that was ſworn laſt time, is now at the very beginning of the Pannel, and in general they are mixt promiſcuouſly, without any deſign or ſtudy in the leaſt. He ſayes we have left out thoſe that ſerved before. I ſolemnly proteſt, I know not one Man Returned upon the laſt Pannel that is left out, unleſs it appeared that he is no Free-holder, and we had no reaſon to put in them, that we knew could not ſerve.

Mr: *Serj. Darnal* That can't appear to us, that they are not Free-holders.

Mr. *J. Rokeby.* But it appears to him, and therefore he did well to leave them out.

Mr. Sher *Buckingham.* What I ſay, I am ready to give upon my Oath.

Mr. *Serj. Darnal.* I ſay there is one *Henry Beadle* left out, and he was one that was ſworn.

Mr Sher. *Buckingham.* I will not ſay for a particular man, I proteſt, that I did not know he was left out. If it be ſo, it was by miſtake; for I know Mr. *Beadle* very well, and I take him to be an honeſt man, and very well affected to the Government, as any man.

Mr. *Serj. Darnal.* We deſire to be tryed by men that are honeſt and well affected to the Government.

Mr. Sher. *Buckingham.* There you have of them, Sir.

Mr. *Serj. Darnal* Thoſe that were ſworn are put laſt of all, and there is not above one of them that is within poſſibility of coming on again.

Mr. Sher. *Buckingham.* It will appear by Mr. *Cooks* Challenges, and the other Pannel, that they ſtood late before, and *Thomas Clark*, who was ſworn the laſt time, ſtands tenth man upon the Pannel.

Mr. *Ser. Darnal.* He was ſworn after we had gone through the Pannel, and took all our Challenges, not appearing at firſt.

Mr. Sher. *Buckingham.* I tell you they ſtand for the moſt part as they did, for ought I know.

Mr. *Ser. Darnal.* There is but one in threeſcore and ten, that can be ſworn now, of them that were ſworn before, and there were nine of them then ſworn.

Mr. *Attor. Gen.* That is a miſtake. Indeed there are a great many added to the Pannel, becauſe there was a defect the laſt time, and therefore now they may perhaps ſtand later.

Mr. *Ser. Darnal.* I do not ſpeak to reflect upon the Sheriffs: I go according to my Inſtructions.

Mr. *J. Powel.* If it had been ſo it had been well enough for you muſt be con-

contented, the Court muſt take it as the Sheriff returns it, and you have a Copy of it.

Mr. *Att. Gen.* Here are four of them that were ſworn before, that ſtood above ſixty off in the old Pannel.

Mr. Sher. *Buck.* The firſt Man that was ſworn, Mr. *Sherbrook*, ſtands within the firſt Twelve now (as well as before.)

Mr. *J. Powell*, If they had been all new, there had been nothing in that.

Mr. *J. Rokeby*, Truly, I can't ſee but that the Sheriff hath done like an equal, juſt, fair, and honeſt Officer.

Mr. *Att. Gen.* They may challenge as they will.

L. C. J. Treby, You are to conſider, that this happens, becauſe you run out as far as your utmoſt Number, that time you challenged thirty five peremptorily, and divers others for Cauſe; ſo as not to leave enough for a Jury, and from that alone aroſe a neceſſity of increaſing the Number of the Pannel

Mr. *Serj Darnal*, It was our *Client* that challenged them, we do not adviſe him whom to challenge.

Mr. *J Rokeby*, But you muſt take the conſequence of it, which cauſes this addition to the Pannel.

L. C. J. Treby, What do you complain of? they that are returned, are put in the ſame order as they were before; they that were ſworn, were (for the moſt part) late in the Pannel then, and ſo they are now. I do not find any thing done to the prejudice of the Priſoner.

Mr. *Serj Darnal*, If the Chriſtian Names had not been miſtaken, there had been perhaps enough to have been ſworn.

L. C. J Treby, That's a good Argument for a new Pannel, becauſe the Chriſtian Names were miſtaken before.

Mr. *J Powell*, It was by defect of Jurors, and therefore there was an abſolute neceſſity of a new Pannel.

L. C. J Treby, I am of the ſame Opinion.

Wharton's Caſe is well known. It was much cited, as to another Point in *Buſhel*'s Caſe. It was a Tryal at the *King's Bench* Bar at *Weſtminſter* by a Jury of *Kent*, upon an Indictment of Murther.

And I think you ſay the Caſe of *H. 7.* was between party and party in *Appeal*. And I believe *Stamford*'s Diſcourſe, in the place cited, relates chiefly to *Appeals*.

I ſhall not deny that a *Tales* may poſſibly be upon an *Indictment* before Juſtices of *Oyer* and *Terminer*. Though 'tis not uſual, nor do you *ſhew*, or our experienced Clerks *know* any ſuch Preſident. I agree, that in the mentioned Caſes, a *Tales* was proper. For, in both thoſe Caſes (*viz.* of *Appeal and Indictment removed into the King's Bench*) the Proceſs for the Jury was, as it ought to be, by Writs of *Venire facias*, &c. upon which a full Jury not appearing, there muſt be a *Tales*. But in proceeding to Tryal before Juſtices of *Oyer* and *Terminer*, on ſuch Indictment as is here, though I will not ſay but they may proceed by *Writ* of *Venire facias*: Yet I do ſay, that the more known Courſe is by *Precept*, in nature of a *Venire facias*. And the uſage is, that *After* (and never Before) the Priſoner hath pleaded *Not Guilty*, there goes a Precept to the Sheriff under the Seals of the ſaid Juſtices of *Oyer* and *Terminer*, returnable at ſuch day as they ſhall Adjourn to, for returning a Jury to Try it. (as was done lately, upon Advice, in the Caſe of *Rookwood*, &c.) And upon the return of that, if, after Challenges, there are not enough left to make a Jury, whether thoſe Juſtices ſhall iſſue a Pre-

Rookwood's Tryal 4. 13.

cept in nature of a *Habeas Corpora*, or *Diſtringas* with a *Tales*, or another *Precept* in the ſame form as before, and without taking notice of the former, is a Queſtion *not* in Judgment before us. For, we are about proceeding to a Tryal on an Indictment in this Court of *Goal Delivery*, (which is the Court wherein generally all capital Crimes are Tryed, as well at this *Place*, as at the *Aſſizes*.) And, I think, *Here* cannot be a *Tales*. I am ſure it is not *neceſſary*. For, Firſt, Here is never any Writ of *Venire facias*, &c. Secondly, Nor ever a Precept for returning a Jury to Try a *particular* Iſſue. But this Court takes the Pannels of Jurys returned by the Sheriff without any *particular* Precept to him.

The *Courſe* of proceeding by vertue of a Commiſſion of *Goal-Delivery*, which is the *Law* in this caſe, is this, *viz.* There is, Antecedent to the coming of the Juſtices, a *General* Commandment, or Precept made in Writing, to the Sheriff by the ſaid Juſtices, to return Juries againſt their coming, for the Trying of all and ſingular Priſoners in their Goal, whether they have pleaded before, or ſhall after. And for that purpoſe it requires the Sheriff to Summon, out of all parts of his County, whence the Priſoners come, a great Number of Freeholders, not a Kin to the Priſoners, to be at the time and place appointed for holding the Court. The Sheriff, by vertue of this general previous Precept, ſummoneth many for Jurors, and prepares divers ſeveral *Pannels* of their Names, either at firſt, or afterwards, as appears neceſſary, and returneth and delivereth in one or more of theſe Pannels from time to time, as the Court does need, and call for any. This, we know, in Fact, is frequently done where the Seſſions of *Goal-Delivery* laſts ſeveral days, and there is occaſion. Though, in ſuppoſition of Law, all theſe Pannels are returned, and the Tryals thereupon had the firſt day of the Seſſions; and in Law it is intended to be but that *one* day only. The return of this Precept is thus, *viz. Executio iſtius Precepti patet in quibuſdam Pannellis huic precepto annexis*, and the Pannels are annexed, and there are often Filed here *divers* Pannels upon the ſame general Precept, though ſometimes but *One*. Theſe Pannels are thus delivered into Court, and a Jury taken out of them, as there is occaſion, only upon a *Parol Award*, that is, barely the Court's calling for the ſame, without *Writ* or Precept in *Writing*, or giving any *Day* for the doing it. For, this Proceeding is *immediatè*, for the ſpeedy delivery of Priſoners; and the *Entry* after ſetting forth that the Priſoner being Arraigned, pleads *Not Guilty*, is, *Ideo immediatè veniat inde Jurata*; or *fiat inde Jurata*. And this Court's being *inſtituted* for the ſpeedy delivery of Priſoners, and Warnings being given long before, of their coming, are the Cauſes why it has been always held without *Doubt*, that Juſtices of *Goal-Delivery* might inquire and Try the *ſame* day.

If it fall out that, by Reaſon of Defaults, Deaths, or Challenges, there cannot be a full Jury had out of a Pannel, (as here there wanted three) which is an Accident that the Court cannot know, till they have gone through the Pannel; I think in this Caſe, that Pannel goes for nothing, is utterly loſt and void, and to be caſt away or cancelled; For, it does not anſwer the Award of the Court, which was to have a Jury to Try the Priſoner *preſently*. It is meant an *effectual* Pannel that ſhould afford a full Jury of Twelve unacceptionable Men, And every Pannel that comes ſhort in this, is to be laid aſide as a void thing. And *then* the Court takes and makes uſe of another immediately, which may not be deficient, whereby the Award is obſerved, and the preſent Service diſpatched.

Object. It is objected, that the *Old* Pannel is parcel of the *Record* in Court, and,

and, upon that, Nine were ſworn, and their Names are all enter'd upon that Record; and now to add a *new* Pannel, upon which Twelve ſhall be ſworn and Try the Priſoner; all *this* appearing upon Record, it will be Error.

Anſw. This Objection ſtands upon two *Miſtakes*, both ariſing from not obſerving the difference between Precepts and Pannels, in a Court of *Goal-Delivery*, and *Venire facias's*, or Precepts and Pannels in *other* Courts.

1. It ſuppoſes that here will be two Pannels, which will appear to relate to the Tryal of this Priſoner Mr. *Cook*. 2. It ſuppoſes that both theſe will become *Records*, or parcel of the *Record* in Court.

If either of theſe Suppoſitions prove to be a miſtake, it will deſtroy the Objection. I think *Both* are miſtakes.

1. Here is not, nor will be, nay, there ought not to be any Pannel purporting to be returned for the Trying of Mr. *Cook*, or any *particular* Priſoner or Priſoners. For, the Precept in this Caſe is (not like a *Venire facias* which alwaies reſpects a particular Iſſue between Parties therein named, but) *General*, requiring the Sheriff to return Jurors enough to Try all the Priſoners, not naming any. And the Return, which is the Anſwer to it by a Pannel or Pannels, is *as General*; the Title of every Pannel, being *Nomina Jurator ad Triandum pro Domino Rege*, and no more; or *Nomina Juratorum ad Triandum inter Dom. Regem & Priſonar. ad Barram*, without naming any of the Priſoners. And it were abſurd if it ſhould be otherwiſe. For, the Precept goes to the Sheriff *Before* the Seſſions, and his Return is ſuppoſed to be made at the *Beginning* of the Seſſions, when it is not known who of the Priſoners will be indicted; or, if indicted, who will plead *not Guilty*, or *Guilty*, or a *Pardon*, or other *Plea*.

When, for the Tryal of a particular Priſoner (or divers Priſoners that are thought fit to be put upon Tryal by the ſame Jury) a Jury is about to be taken out of any Pannel, the Clerk, as he goes along, may take a Note in Paper of the Name of every one that is ſworn, or he may (and uſually doth) write, *Jur.* on the ſaid Pannel againſt the Name of every one ſworn. But this Note or Mark is no part of the Record; it is not *ex Inſtitutione Legis*, it is but a voluntary *Memorandum*, for the help of his Memory. If he could ſafely truſt to the ſtrength of his Memory, he need not write at all on this occaſion; I mean, *not* till a full Jury is ſworn, who Try the Priſoner. But then, indeed, the Clerk muſt, (from his Notes, or Memory) write the Names of all the Twelve, entring them on the Record of the Indictment, in this manner, *viz.* juſt after the *Ideo immediatè veniat inde Jurata coram prefatis Juſtic.* &c. Adding, *Et Juratores Jurate illius*, &c. *Scil.* A. B. *&c. Dicunt*, &c. And it is by *this* only, that the Names of thoſe that are ſworn, come to be of Record; and it is this entry upon the Body of the Indictment *alone*, that is the Record, that ſhews who were Jurors ſworn, to Try *this*, or *that*, or *other* Priſoner, or Priſoners.

So that, if the old Pannel were Filed, and were a *Record*, as the Priſoner's Council would ſuppoſe, yet it would not thereby be made appear, that the ſaid Pannel was returned, or uſed for, or in order to the Tryal of *this* Priſoner.

2. The old Pannel is *not* filed among the Records of the Court, nor ought to be. When ſuch a Pannel does not produce a Jury, the Clerks may and uſe to throw it by, as a uſeleſs thing. But, however they uſe it, we cannot allow it to be a Record. It was received *de bene eſſe*; It is abortive and comes to nothing. And it is not every thing that paſſeth in Court in or-

der

der to a Record, that comes to be ſo. A Frivolous Plea, that is rejected, is not Recorded. A *Preſentment* or Bill of Indictment, before it is found, is not a Record, And if an *Ignoramus* be returned upon a Bill of Indictment, it never can be a Record. And, thereupon, the Clerks do ſometimes throw it away, tho ſometimes they keep it and put it on the File, only taking care to croſs it, but if they do forget to croſs it, yet it is not a Record,

By all this it is apparent how great the difference is between a *Precept* and Pannels in *this* Court, and a *Venire facias* and a Pannel returned thereupon, which is ever iſſued after Iſſue joyned, and doth alwayes mention the particular Parties and Matter it relates to, and is a Record, and a ground for an *Habeas Corpora* with a *Tales*, to be returnable at a certain future day.

But, in this Caſe in this Court, it is quite otherwiſe.

Sir *B. Shower*. Then, my Lord, ſince there is a new Pannel, we hope we ſtand in the ſame condition upon the Act of Parliament, to take Exceptions to the Indictment before this Jury ſworn, as we did before the other Jury ſworn, ſince all that is quite ſet aſide.

L. Ch. J. Treby. Yes truly, I think that may be.

Mr. *Attorn. Gen.* But theſe Gentlemen would have done well to have given notice of their Exceptions.

Sir *B. Shower*. My Lord, I ſhall not ſtand upon an Exception which I think I might take to the word *Turmas* in the Indictment, which whether it be Troops of Men, or Horſes, or what it is does not appear; but, I think, we have an Exception to the cheif Overt Act laid in the Indictment, and that we preſume, if my Brief be right, will be ſufficient to ſet aſide this Indictment: The Indictment charges, That Mr. *Cook* did agree with other Traytors to ſend Mr. *Cherneck* into *France* to the *ſaid* late King *James*, and King *James* is never mentioned before in all the Indictment, that is one Exception that we have, that there is no late K. *James* mentioned in the Indictment before this, if my Copy be right, if it be otherwiſe, I ſuppoſe, they will find it: it is laid, that Mr. *Cook* did agree to ſend *Cherneck* as a Meſſenger into *France*, *eidem nuper Regi Jacobo*, and no *Rex Jacobus* is mentioned before. Then there is another Exception, and that's this, They come and ſay, that whereas there was a War with *France*, which is only in the Indictment by way of recital or rehearſal of an Hiſtory, *Quod cum per magnum Tempus fuit & modo ſit*, &c. Mr. *Cook* the Premiſſes knowing, did compaſs and imagine the Kings death, and did adhere to the ſaid Kings Enemies ſuch a day. Now, my Lord, I do think, that this can never be maintained, for that *Cum quoddam Bellum*, &c. being an Hiſtorical Narrative, is not poſitive enough: For adhereing to the Kings Enemies, being one of the Treaſons laid in the Charge, there ought to be a War at the time of the adheſion, and of neceſſity then that ought to be preſented by the Jury; for tho your Lordſhips can Judicially take notice of War or Peace, yet you cannot take notice of it at ſuch a particular time, and the reaſon is from the Notion that is in my Lord *Coke* in his 3*d*, *Inſtitutes*, Cap. *Treaſon*. That adheſions to Rebels is not adheſion to the Kings Enemies; for a Rebel is not ſaid to be an Enemy, but it muſt be adhereing to ſuch an Enemy, as between whom and the King there was War at that time, and conſequently it ought to be more poſitively averred in the Indictment, than it here is: but as to the Overt Act of Mr. *Cooks* conſulting and agreeing to ſend *Cherneck* over to the ſaid late King *James* to give him notice of what was agreed upon between them, when King *James* is not named before, that can never be got over with ſubmiſſion

Mr.

Mr. *Baker.* It is a miſtake of your Copy, Sir *Bartholomew Shower.*

Mr. *Att. Gen.* I have looked into the Record, and it is *Jacobo Secundo nuper Regi*, not *Dicto.*

Sir *B. Shower.* Then with ſubmiſſion, my Lord, they cannot try us now, for we ought to have a true Copy of the Indictment.

Mr. *Baker.* Upon Demand. But you never demanded it.

Sir *Barth. Shower.* Yes, it was demanded.

Mr. *Baker.* Who demanded it? Sir *B. Shower.* Our Sollicitor *Burleigh.*

Mr. *Baker.* No, he did not, I gave it him officiouſly.

Mr. *Att. Gen.* With ſubmiſſion, my Lord, it is no Objection at all, *that* their Copy is *wrong.* That ſhould have been before the Priſoner had pleaded; for the words of the Act are, that he ſhall have it ſo many days before, to enable him to *plead*, and he cannot be put to plead unleſs he have a Copy of the Indictment ſo long before: and at *Rookwood*'s Tryal it was ſaid by the Court it could not be alleged *after* Plea pleaded.

Mr. *Burleigh.* The Copy was given to me publickly in Court.

Mr. *Soli. Gen.* Why did not your Sollicitor compare it with the Indictment?

Mr. *Att. Gen.* They might have compared it by the Clerk's reading it to them; but they will not admit the Priſoner's Sollicitor to ſee the Original, becauſe the Act expreſly ſays they ſhall not have a Copy of the Witneſſes Names.

Sir *B. Shower.* The Officer is to deliver a true Copy of the Indictment.

Mr. *Att. Gen.* No; the Party is to demand it by himſelf or his Agent, and then he is to have it; and if he be denied he ought to apply himſelf to the Court, who will order the Delivery of it; but we ſtand upon it that they cannot take this Exception now after they have pleaded, for the intent of the Copy is to enable him to plead.

L. C. J. *Treby.* The Copy, by the Act of Parliament, is to be delivered to the Priſoner, his Attorney, Agent or Sollicitor, if they require the ſame, and here it ſeems there was no requiring of it, but it was voluntarily given, and now you have lapſed your time of making the Exception of wanting a Copy by having pleaded to the Indictment, whereby you have in effect admitted and declared, either that you had a true Copy of it, or that you did not think fit to require one; for the uſe of the Copy is to better enable the Priſoner to plead. But when you did plead, you took upon your ſelf to be well able to plead without the help of a Copy, which you might have had upon the asking for.

Sir *B. Shower.* Then, my Lord, there is another thing in the Indictment, that in this Overt-Act there is a new Time, and a new Place, and a new Verb, and a new Fact alleged, and no Nominative Caſe; it is alleged that *Peter Cook* at firſt with others did ſo and ſo; and then the firſt of *July* to bring the Treaſons aforeſaid to effect, there *& alibi, &c.* (which is very looſe, for I know not whence the *Venue* muſt come) did traiterouſly with *Chernock, Friend, &c.* conſult to procure *Diverſas Turmas & Legiones, &c.* to join with them in *England*, and then it comes *& ulterius* ſuch a Day, Year and Place, did traiterouſly agree ſo and ſo, and not ſay *who*: now this is neither by expreſs words nor Rule of Grammar to be referred to the Priſoner at the Bar, it does not ſay *Ipſe Idem Petrus Cook*; now, my Lord, that the King's Counſel thought it neceſſary in every Overt-Act is plain, becauſe thoſe words are put in every other Clauſe of the Indictment, in thoſe Clauſes that goe before and thoſe Clauſes that come after; then if they will take it, that this Clauſe muſt refer to the next Antecedent, that will not do, for the next precedent Nominative Caſe is either *Friend* or *Chernock.* So that this is without a Nominative Caſe, and the Preſidents in my Lord *Coke*'s Entries 361, and all the other Books have the Nominative Caſe repeated,

where there is a new Time, and a new Place, and a new Fact alleged: now it might be true that the Priſoner at the Bar might be preſent, and this ſame Treaſon might be diſcourſed of and agitated, and there might be a Conſult about this Buſineſs, and yet it is not neceſſarily implied that he muſt conſent and agree to ſend *Chernock* into *France*, upon which the great ſtreſs of the Indictment lies: therefore we ſay, theſe words having no Nominative Caſe, the Indictment cannot hold.

Mr. *Att. Gen.* My Lord, as to this Objection it will receive a very plain Anſwer. Our Indictment begins and ſets forth that *Peter Cook*, the Priſoner at the Bar, did imagine and compaſs the King's Death, and did adhere to the King's Enemies, and theſe are the Treaſons; and then it ſets forth the Overt Act, that in Execution of the traiterous Compaſſings, Imaginations and Adheſions aforeſaid. *Ipſe Idem Petrus Cook* together with Sir *William Parkins*, Mr. *Chernock*, Sir *John Friend* and others, did propoſe and conſult to procure from the *French King* Forces to invade this Land *& ulterius* he and they did agree to ſend *Chernock* to the late King *James*.

Mr. J. *Rookeby*. There's the firſt naming of *James* the Second, late King of *England*, and there is no *eidem Jacobo* I promiſe you.

L. C. J. *Treby*. Well, that Miſtake is over. Pray go on Mr. Attorney General.

Mr. *Att. Gen.* My Lord, as to this Objection of Sir *Barth. Shower*, he would have *Ipſe Idem Petrus* repeated over again, and he ſays that we lay a *diſtinct* Overt-Act with a different Time and Place. Now that is a miſtake too, it is not a different Time and Place, but the ſame Time and Place; and it mentions that *cum R. Chernock, J. Friend, &c. & cum aliis Proditoribus conveniebat, conſultabat, &c.* Which he ſays may refer to Sir *J. Friend* or *Charnock*: but if you look into the Frame of the Sentence that can never be.

Mr. J. *Rookeby*. *Petrus Cook* is the Nominative Caſe that governs all the Verbs.

Mr. *Att. Gen.* And there is no other Nom. Caſe in all the Indictments but *Petrus Cook* except it be be in a *Parentheſis*, and that ſaves the Rule of Grammar if there were any thing in it, that it muſt refer to the laſt antecedent.

Sir *B. Shower*. When it comes to the Clauſe that he did procure Horſe and Arms, there the Nominative Caſe is repeated.

L. C. J. *Treby*. It would not have made it worſe, if they had made it ſo here, but the Queſtion is whether it be neceſſary.

Sir *B. Shower*. Indictments ought to be preciſely certain, but this we ſay is not ſo.

Mr. *Att. Gen.* But here is as much certainty as to the Perſon, as can be, that he did conſult with ſuch and ſuch about ſuch things, and further the ſame Day did agree with the ſame Traytors to do ſo and ſo.

Mr. J. *Powell*. Indictments it is true ought to be plain and clear, but *I* do not ſee but here is as much certainty as can be that he did ſuch a Day conſult, and further the ſame Day did agree with the ſame Perſons.

Sir *B. Shower*. VVho did agree, my Lord?

Mr. *J. Powell*. He that did conſult with them before, and that is *Peter Cook*.

Mr. *Att. Gen.* You'd have had us to have put it to every Verb, I believe.

Sir *B. Shower*. In Indictments no Preſumption ought to be uſed, but the Facts ought to be directly and poſitively alleged.

Mr. J *Powell*. Its true there ſhould be no Preſumption, and there is none here, for certainly this is a plain Aſſertion of Fact.

L. C. J. *Treby*. Here are two things that are ſet forth; *Firſt*, That *Peter Cook*

Cook did *meet* with Sir *John Friend*, Sir *William Parkyns*, and others, and then and there did conſult with them, and conſent to procure an Invaſion, and joyn an Inſurrection thereto. And, *Secondly*, Further with the ſaid Traytors did *agree* to ſend *Chernock* into *France*. Now, what is the Nominative Caſe to this Agreement? Is it Sir *John Friend*, and Sir *William Parkyns*? That's impoſſible; for they could not be ſaid properly to meet and conſult with themſelves, every one of them with his own ſelf and the reſt: And then the Number, if it had referr'd to them, ſhould have been Plural, but here it is Singular [*agreavit*] and the ſenſe is no more than this; That then and there Mr. *Cook* did meet with ſuch Perſons, and did conſult with them about ſuch and ſuch Matters, and further, did agree with them to do thus.

Sir *B. Shower*. The meaning is not to be forced and ſtrained by Inference or Preſumption, but it ought to be expreſs and plain.

L. C. J. *Treby*. Nay, you cannot expreſs it better; you may make a Tautology of it if you will.

Sir *B. Shower*. The Paragraph is long, my Lord, and therefore requires the more care to have thoſe Repetitions that are neceſſary.

L. C. J. *Treby*. Your Objection to this Paragraph is, that it is too long; but repeating the ſame Nominative Caſe to every Verb, would make it much longer.

Sir *B. Shower*. It cannot be underſtood to mean *Peter Cook* without Preſumption, which ought not to be in an Indictment.

Mr. *Att. Gen*. And as to Sir *Bar. Shower*'s firſt Objection, his Copy is right too, and he miſtook the place.

Sir *B. Shower*. You ſhou'd have given me that for an Anſwer.

Mr. *Att. Gen*. Nay, you ſhould have taken more care, and not have made the Objection.

L. C. J. *Treby*. Truly, I think it is hardly poſſible to have made this better if it had been otherwiſe than it is.

Mr. Serj. *Darnel*. My Lord, we think we have a good Fact of it, which we rely upon, and therefore do not ſo much inſiſt upon theſe Exceptions, tho, in duty to our Client, we mention that which we think is neceſſary, and we ſubmit to your Lordſhip.

Cl. of Arr. Set *Peter Cook* to the Bar. [*Which was done*] You, the Priſoner at the Bar, theſe good Men which you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Tryal of your Life and Death; if therefore you wou'd challenge them, or any of them, your time is to ſpeak unto them as they come to the Book to be ſworn, and before they be ſworn.

Cryer. Call Sir *John Sweetapple*. Sir *John Sweetapple*. Here.

Cook. My Lord Chief Juſtice, if your Lordſhip pleaſe, I am adviſed——

L. C. J. *Treby*. Pray Sir ſpeak out that we may hear what you ſay, and let the Cryer make proclamation for ſilence. [*Which was done*.]

Cook. My Lord, before the Jury is called, I am adviſed, that if any of the Jury have ſaid already that I am guilty or they will find me guilty, or I ſhall ſuffer, or be hanged, or the like, they are not fit or proper Men to be of the Jury.

L. C. J. *Treby*. You ſay right, Sir, it is a good cauſe of Challenge.

Mr. J. *Rokeby*. That will be a ſufficient cauſe, if, when they come to the Book, you object that, and be ready to prove it.

Cook. Which is Sir *John Sweetapple*? [*He was ſhewn to him*.]

Cl. of Arr. There he is. *Cook*. I challenge him.

Cl. of Arr. *William Walker*.

Cook. Sir, have you ſaid any ſuch thing, that you believe me guilty?

Mr. *Walker*. No, Sir.

Mr. *Baker*. My Lord, he is asking of the Jury-Man the Queſtion.

Mr. J. *Rokeby*.

Mr. J. *Rokeby*. That's a Fact the Priſoner ſhould prove upon him.

Mr. *Att. Gen.* My Lord, he muſt not ask the Jury that Queſtion, Whether they have declared before, that they will find him guilty; that is to make them guilty of a Miſdemeanor.

Mr. Serj. *Darnall*. Is it any Miſdemeanor for me to ſay, I think or believe ſuch a Man is guilty.

Mr. *Att. Gen.* If he be ſummon'd to be of a Jury, and declare his Opinion before hand, it is a Miſdemeanor.

Mr. Serj. *Darnall*. But ſuppoſe it be before he was ſummon'd?

Mr *Att. Gen.* If you make any ſuch Objection, you muſt prove it, and not out of the Jurymans own Mouth.

Mr. Serj. *Darnall*. I think any Man, my Lord, that comes to ſerve upon the Jury, may be ask'd any Queſtion that does not make him guilty of any Offence or Crime, or liable to any Puniſhment: Now if any of theſe Gentlemen that are return'd upon this Pannel, before the Summons have declared their Opinion, that the Priſoner is guilty, or ought to ſuffer, with Submiſſion, the Priſoner may ask ſuch a Queſtion, Whether he have ſaid ſo, yea or no?

Mr J. *Powell*. He cannot upon a *Voyer Dire* be ask'd any ſuch Queſtion.

Mr. J *Rokeby*. It is not denyed to be a material Objection, but it muſt be made out by Proof.

L. C. J *Treby*. You put it too large, Brother *Darnall*, you may ask upon a *Voyer Dire*, whether he have any Intereſt in the Cauſe; nor ſhall we deny you liberty to ask whether he be fitly qualified, according to Law, by having a Freehold of ſufficient Value; but that you can ask a Juror or a Witneſs every Queſtion that will not make him criminous, that's too large: Men have been ask'd whether they have been convicted and pardon'd for Felony, or whether they have been whipt for Petty Lacinary; but they have not been obliged to anſwer; for, tho their Anſwer in the affirmative will not make them criminal or ſubject them to Puniſhment, yet they are Matters of Infamy; and if it be an infamous thing, that's enough to preſerve a Man from being bound to anſwer. A pardon'd Man is not guilty, his Crime is purged; but merely for the Reproach of it, it ſhall not be put upon him to anſwer a Queſtion whereon he will be forced to forſwear or diſgrace himſelf. So Perſons have been excuſed from anſwering whether they have been committed to *Bridewell* as Pilferers or Vagrants, or to *Newgate* for Clipping or Coining, *&c.* Yet to be ſuſpected or committed is only a Misfortune and Shame, no Crime. The like has been obſerved in other Caſes of odious and infamous matters which were not Crimes indictable. But to keep to our Caſe; 'Tis true, a *Juror* may be challenged being an *Alien*, or being a *Villain*; but where the Matter apparently carries Crime or Shame, it ſhould be proved; the Outlawry ſhould be proved, and ſo ſhould the *being a Villain*. Yet that is no Crime, tho it be an Ignominy.

Mr. Serj. *Darnall*. But, my Lord, I take this to be no manner of Infamy at all, there is nothing of Crime, nor nothing of Reproach, but only a declaring of a Mans Opinion.

L. C. J *Treby*. Truly, I think otherwiſe; I take it to be at leaſt a ſcandalous Misbehaviour, and deſervedly ill ſpoken of, for any Man to pre-judge, eſpecially in ſuch a heinous matter. I think it is a very ſhameful diſcovery of a Man's Weakneſs and Raſhneſs, if not Malice, to judge before he hears the Cauſe, and before the party that is accuſed could be tryed. But, it ſeems, by what the Priſoner ſays, that he would ask all the *Jurors*, whether they have not ſaid, that he was *guilty*, or that they would *find* him guilty, or that he ſhould be *hanged*, or the like: Which (preſuming him innocent) is to ask whether they have not defamed and ſlandered him in the higheſt degree; and to force them to diſcover that they have a mortal Hatred to him, and come with a malicious reſolution to convict him: Which admitting they are not puniſhable by our Law,

yet

yet are things ſo deteſtably wicked and ſo ſcandalous as are not fit to be required to be diſcloſed by and againſt themſelves,

Mr. Serj. *Darnall.* Pray, my Lord, what is more common than for a Man to ſay, before he is ſummoned to be upon a Jury, when he hears a Fact reported concerning ſuch a one, to ſay I believe he is guilty, or I am of opinion he is, and I am ſure he will be hanged, and yet there is no crime in this.

L. C. J. *Treby.* Truly, Bro. *Darnall,* I know not how you may approve of ſuch a Man, but I'll aſſure you I do not. I take the Queſtion *not* to be concerning a Man's diſcourſing *ſuppoſitively*; as, if upon hearing News, or a Report of clear Evidence, a Man ſhould ſay, *Suppoſing this to be true, ſuch a Man is guilty, and I ſhould find him ſo if I were of his Jury.* This might not be ſufficient to ſet aſide a Juror: for this has been a general Diſcourſe among the Subjects upon occaſion of this Conſpiracy; and it imports that if Evidence ſhould not be *true* and *clear*, he would acquit him. And ſo he is, as he ſhould be, indifferent. But if a Man, qualified for a Juror, affirm *poſitively* that ſuch a Priſoner is guilty, and that he will find him ſo whatever Evidence or Proof be given or made to the contrary, I think that may be a Miſdemeanour puniſhable as an owning and encouraging of Falſhood, Perjury and Injuſtice, and a contempt and ſcandal to the Juſtice of the Kingdom. Tho I hope and believe that no man hath ſo demeaned himſelf.

Mr. J. *Powell.* In a Civil Caſe it would be a good Cauſe of Challenge. If a Man have given his Opinion about the right one way or other, may you not upon a *Voire dire* ask him whether he hath given his Opinion one way or other? I believe it may be askt in a Civil Cauſe becauſe he may have been a Refferree; but if you make it criminal it cannot be askt, becauſe a Man is not bound to accuſe himſelf; now the Difference lies in the nature of the Cauſe, it is not Criminal in a Civil Caſe for a Man to ſay he was an Arbitrator in ſuch a Caſe, and, upon what appeared before him, he was of ſuch an Opinion.

Mr. *Att. Gen.* But, my Lord, it is a different Caſe to give an opinion about the Right between Party and Party where a Man has been an Arbitrator and ſo in the Nature of a Judge, and where a Man is to go upon a Jury in the Caſe of Life and Death, and before the Evidence given he declares his Opinion without hearing the Cauſe.

Sir *B. Shower.* My Lord, we know ſeveral of the Tryals have been printed, and the Names of ſeveral Perſons mentioned, and upon reading of the Tryals or converſing about them, Men are apt to give their Opinions one way or other.

Mr. Serj. *Darnall.* It is only an Objection in caſe he has done it.

Mr. J. *Rookeby.* But, Brother, how can you ask him the Queſtion?

Mr. Serj. *Darnal.* If the Court are of opinion that it is ſuch a Crime that it cannot be askt, as tending to make a Man accuſe himſelf of an infamous Crime, then we ſubmit it to you, and I confeſs we muſt not ask it; but we cannot apprehend that there is either Crime or Infamy in it, tho we think it is an Objection and a good Cauſe of Challenge.

Mr. B. *Powys.* I think, tho it be not ſuch a Crime as infamous upon which a Man is not to be credited, for that is Infamy in the Eye of the Law, whereby a Man is prejudiced in his Credit; yet however it is a ſhameful thing for a Man to give his Judgment before he hath heard the Evidence and therefore I think you ought not to ask him it, to make him accuſe himſelf, if it be an opprobrious matter upon him.

Mr. Serj. *Darnall.* Truly, my Lord, I always took it to be the Rule, if the the thing asked to the Perſon returned be not criminal nor infamous, the Party that is askt ought to anſwer to it.

L. C. J. *Treby.* I would fain know, if you ſhould ask any of the Ju-

ry-men this Queſtion, whether he be guilty of all the Crimes that are pardoned by the laſt Act of Grace, he be bound to anſwer it?

Mr. Serj. *Darnall.* Undoubtedly we cannot ask any ſuch Queſtion; no, not to any one of the things therein mentioned.

L. C. J. *Treby.* But yet you will force him to diſcover a Crime (if it be one) that is unpardoned.

Mr. J. *Powell.* Certainly you go too far, Brother, for no Man is obliged to charge himſelf with what is Criminal, but whether this be Criminal to ſay, *I believe ſuch a one will be hanged*, is of another Conſideration.

Mr. J. *Rookeby.* But I think it muſt be proved upon him if any Objection be made.

Sir *B. Shower.* My Lord, it will be no eaſy thing to bring Witneſſes to prove this matter, and therefore we would have it from his own Mouth.

Mr. J. *Rookeby.* And it is a very hard matter for a Man to be put upon proving every Diſcourſe that he has had about the publick Affairs of the time.

Mr. *Recorder.* The Reaſon of your Exception is, that he has declared his opinion before hand, that the Party would be hanged or would ſuffer, that's a Reproach and a Reflection upon a Wiſe man ſo to do; and if they can prove it upon him let them do it: but whether you ſhould ask him ſuch a Queſtion, Whether he be a Fool or a Knave for the giving an opinion one way or other, that's the Queſtion before us.

Mr. Serj. *Darnall.* My Lord, we do not offer it to the Court as an Objection that he is not a Wiſe man.

Mr. *Att. Gen.* But what a Man does utter imprudently may occaſion a Prejudice againſt him, and therefore ought to be proved, and not he to prove it himſelf.

L. C. J. *Treby.* Eſpecially being a Freeholder of *London*, and taking notice of what is done in *London*; and if he does take notice of the Fact, and does previouſly give his Opinion of a matter which he may be called upon a Jury to try, this is an Indiſcretion and a Reproach to him, and I think a Miſdemeanour.

Mr. Serj. *Darnall.* My Lord, I acknowledge it is ill done of him, that is, indiſcreetly and not wiſely, and we would have Diſcreet and Wiſe men upon our Jury.

Mr. *Cowper.* My Lord, Mr. Serj. *Darnall* will make it ſo little a thing at laſt that it will amount to no cauſe of Challenge, if it were even proved againſt him, which we inſiſt it ought to be, it being their Objection, and the Party not being bound to prove it againſt himſelf; but truly we think there is more in it than ſo, becauſe it is an unjuſt prejudging of a Man before he is tryed and heard, and if ſo, it is a thing that he ought not to accuſe himſelf of, and therefore we oppoſe the asking any ſuch Queſtion.

Mr. Serj. *Darnall.* Our Objection is not becauſe it is an Offence to declare a Man's opinion upon a Fact reported, but becauſe it ſhews he has a ſettled opinion againſt the Perſon of his Guilt, and ſo he is not ſo equal a Man to try him.

L. C. J. *Treby.* And is that like a Honeſt man and a Freeholder of *London*, (who ought to be indifferent) to come with a ſettled opinion againſt a Man, when he is to be one of his Jury?

Mr. Serj. *Darnall.* Well, my Lord, we have been heard, and ſubmit it to the Judgment of the Court.

L. C. J. *Treby.* Truly I think it reflects both Diſhoneſty and Diſhonour upon him, and therefore theſe Queſtions ought not to be askt. The Queſtion is *not* whether a Man (if ever ſuch a Man there were) that hath ſo reſolved and declared ſhall be ſworn? No; he is not fit to ſerve upon a Jury. But the Queſtion is, How this ſhall be diſcovered, by his own Oath or by other Proof? I think it ought to be made appear by other Proof, if true. A

Man

Man attainted of Felony, Forgery, False Verdict, or Perjury, ought not to ſerve on a Jury, yet he ſhall not be examined concerning the ſame on a *Voire dire*. And if there be in Court a Copy of ſuch Judgment carefully examined and kept by himſelf, he ſhall not be forced to Anſwer whether it be a true Copy; tho his Anſwer could not ſubject him to any further Penalty.

Mr. Serj. *Darnall*. My Lord, I hope no Gentleman of the Jury has done it.

L. C. J. *Treby*. I hope no Freeholder of *London* is ſo indiſcreet or ſo unjuſt. But if any Man in this Pannel have any particular Diſpleaſure to the Priſoner, or be unindifferent, or have declared himſelf ſo, I do admoniſh and deſire him to diſcover ſo much in general; for, it is not fit, nor for the honour of the King's Juſtice, that ſuch a Man ſhould ſerve on the Jury.

Mr. Serj. *Darnall*. We hope ſo too. We hope that all that are returned upon the Jury are diſcreet and impartial Men.

Cl. of Arr. Well, Sir, what ſay you to this Gentleman Mr. *Walker*?

Cook. I challenge you, Sir. *Cl. of Arr*. *Nathanael Long*.

Sir *B. Shower*. My Lord, we think he may ask if they have a Freehold or no; becauſe the Law requires that Qualification, and the Priſoner not being able to prove the Negative, it puts the Proof of the Affirmative upon the Perſon himſelf.

Mr. *Att. Gen*. What does Sir *Bartholomew* mean? would he have the Jurymen bring their Evidences with them to prove their Free-hold?

L. C. J. *Treby*. No ſure, Mr. *Attorney*; but to ask the Queſtion was allowed him the laſt time, and we will not deny him the ſame juſt Favour now.

Cook. Are you a Free-holder, Sir, in *London* of the value of 10 *l*. a year?

Mr. *Long*. Yes, Sir.

Cook. Were you of the Grand-Jury when the Bill was found againſt me?

Mr. *Long*. No, Sir. *Cook*. I challenge you, Sir.

Cl. of Arr. *William Carbonell*.

Mr. *Carbonell*. My Lord, I am no Free-holder.

L. C. J. *Treby*. What, does he ſay he has no Free-hold?

Cl. of Arr. Yes, my Lord. L. C. J. *Treby*. Then he muſt be ſet aſide.

Cl. of Arr. *Joſhua Foſter*.

Mr. *Foſter*. My Lord, I am no Freeholder in *London* neither.

Mr. *Att Gen*. My Lord, we deſire they may be ſworn whether they have a Free-hold or not.

Cl. of Arr. Hold Mr. *Carbonell* and Mr. *Foſter* the Book. (*which was done ſeverally.*) *You ſhall true anſwer make to all ſuch Queſtions as ſhall be askt you by the Court. So help you God.*

Mr. Att. Gen. Ask him if he hath not a Freehold in *London*?

Mr. *Carbonell*. No, I have not.

Cl. of Arr. Have you or any body in truſt for you a Freehold in *London* of the Value of 10 *l*. a year? Mr. *Carbonell*. No, Sir.

Cl. of Ar. Joſhua Foſter, have you or any in truſt for you any Eſtate of Freehold in *London* of the Value of 10 *l*. a year? Mr. *Foſter*. No, Sir.

Cl. of Arr. Joſeph Billers.

Cook. I deſire they may be called in the order as they are in the Pannel, you have not called *John Ewen*, who is next.

Cl. of Arr. I do call them in order: as for Mr. *Ewen*, one has made Oath that he is ſick, and is not able to come hither. What ſay you to Mr. *Billers*? there he ſtands.

Cook. Sir, are you a Free holder of 10 *l*. a year, within the City of *London*?

Mr. *Billers*. Yes, Sir.

Cook. Was you of the Grand-Jury, Sir, when the Bill was found againſt me?

Mr. *Billers*. No, Sir. *Cook*. I challenge you. *Cl. of Arr*. *John Child*.

Cook. Sir, are you a Free-holder within the City of *London*?

Mr. *Child*.

Mr. *Child.* Yes, Sir. *Cook.* Of 10 *l.* a year? Mr. *Child.* Yes, Sir.
Cook. Were you of the Grand-Jury, when the Bill was found againſt me?
Mr. *Child.* No, Sir. *Cook.* I challenge you. *Cl. of Arr. Edward Leeds.*
Cook. Sir, are you a Freeholder within the City of *London*, of 10 *l.* a year?
Mr. *Leeds.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Leeds.* No, Sir. *Cook.* I challenge you.
L. C. J. *Treby.* What Queſtion was that he ask'd him?
Cl. of Arr. Whether he were one of the Grand-Jury that found the Bill.
L. C. J. *Treby.* A very proper Queſtion: for an Indicter ought not to be a Tryer. *Cl. of Arr. Thomas Clark.*
Cook. Sir, are you a Free-holder within the City of *London* of 10 *l.* a year?
Mr. *Clark.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me.
Mr. *Clark.* No, Sir. *Cook.* I challenge you. *Cl. of Arr. Nathan Green.*
Cook. Are you a Free-holder, Sir, within the City of *London*, of the value of 10 *l.* a year. Mr. *Green.* Yes, Sir.
Cook. Were you of the Grand Jury that found the Bill againſt me.
Mr. *Green.* No, Sir. *Cook.* I challenge you. *Cl. of Arr. Henry Sherbroke.*
Cook. I have nothing to ſay againſt him.
Cl. of Arr. Then hold Mr. *Sherbroke* the Book. (*which was done.*) Look upon the Priſoner. *You ſhall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Priſoner at the Bar* (*whom you ſhall have in charge*) *according to your Evidence. So help you God.*
(*Then* Mr. Sherbrooke *was put into the Place appointed for the Jury.*)
Cl. of Arr. Henry Dry.
Cook. Sir, are you a Free-holder in the City of *London*, of the value of 10 *l.* a year. Mr. *Dry.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Dry.* No, Sir. *Cook.* Sir, I challenge you. *Cl. of Arr. Joſeph Morewood.*
Cook. Sir, have you a Free-hold in *London*, of the value of 10 *l.* a year?
Mr. *Morewood.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Morewood.* No, Sir. *Cook.* Sir, I challenge you.
Cl. of Ar. Richard Greenway.
Cook. Are you a Free-holder of 10 *l.* a year in *London.* Mr. *Greenw.* Yes Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Greenway.* No, Sir. *Cook.* Sir, I challenge you.
Cl. of Arr. John Sherbrook.
Cook. Sir, are you a Free-holder in the City of *London* of 10 *l.* a year?
Mr. *Sherbrook.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Sherbrok.* No, Sir. *Cook.* Sir, I challenge you.
Cl. of Arr. Thomas Emmes.
Cook. Are you a Free-holder, Sir, within the City of *London* of 10 *l.* a year?
Mr. *Emmes.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Emmes.* No, Sir. *Cook.* I challenge you.
Cl. of Arr. Samuel Jackson.
Cook. Sir, are you a Free-holder within the City of *London* of 10 *l.* a year?
Mr. *Jackſon.* Yes, Sir.
Cook. Were you of the Grand Jury that found the Bill againſt me.
Mr. *Jackson.* No, Sir. *Cook.* Sir, I challenge you.
Cl. of Arr. Henry Hunter.
Cook. Are you a Free-holder, Sir, in *London* of the value of 10 *l.* a year?

Mr. Hunter

Mr. Hunter. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. *Hunter.* No, Sir.

Cook. I Challenge you.

Cl. of Arr. John Deacle.

Cook. Sir, are you a Freeholder within the City of *London*, of the Value of Ten pounds a year?

Mr. *Deacle.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. *Deacle.* No, Sir.

Cook. I challenge you.

Cl. of Arr John Cullum.

Cook. I accept of him. *(He was ſworn.)*

Cl. of Arr. Thomas Shaw.

Cook. I accept of him. *(He was ſworn.)*

Cl of Arr. George Joyce.

Cook. Sir, are you a Freeholder within the City of *London* of Ten pound a year?

Mr. *Joyce.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. *Joyce*, No, Sir.

Cook. I challenge you.

Cl. of Arr. Richard Young.

Cook. I have nothing to ſay againſt him. *(He was ſworn.)*

Cl. of Arr. John Hodges.

Cook. Sir, are you a Freeholder within the City of *London*, of Ten pound a year?

Mr. *Hodges.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. *Hodges.* No, Sir.

Cook. I challenge you.

Cl. of Arr. John James.

Cook. Sir, are you a Freeholder within the City of *London* of Ten pound a year?

Mr. *James*, Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. *James*, No, Sir.

Cook. I challenge you.

Cl. of Arr. Thomas Poole.

Cook. Sir are you a Freeholder within the City of *London* of Ten pound a year?

Mr. *Poole*, Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. *Poole.* No sir?

Cook. I challenge you.

Cl. of Arr. Peter Parker.

Cook. Sir are you a Freeholder in the City of *London* of Ten pound a year?

Mr. *Parker.* Yes. Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. *Parker.* No, Sir.

Cook. I challenge you.

Cl. of Arr. William Wilkinſon.

Mr. *Wilkinſon.* My Lord, I am no Freeholder in *London*.

(To which he was ſworn.)

Cl of Arr. Henry Mitchell.

Cook. Hold, Sir, here *Thomas Man* in my Pannel is next.

Cl. of Arr. There is Oath made that he is ſick in Bed. What ſay you to Mr. *Mitchell*?

Cook. Sir, have you a Freehold of 10 *l.* a year in the City of *London*?

Mr. *Mitchell.* No, Sir. *(To which he was ſworn.)*

Cl. of Arr. Richard Ryder.

Cook. Sir, Have you a Freehold of Ten pound a year in the City of *London*?

Mr. *Ryder*, Yes, I have, Sir; but I live in a Pariſh that never ſerve upon any Juries, nor ever did in the memory of any Man.

Cl. of Arr. But have you a Freehold of 10 *l.* a year?

Mr. *Ryder.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. *Ryder.* No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. Richard Temple.

Mr. *Temple.* My Lord, I am no Freeholder. *(To which he was ſworn.)*

Cl. of Arr. Peter Walker.

Cook. Sir, are you a Freeholder of the City of *London*, of Ten pound a year?

Mr. *Walker*, Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. *Walker.* No, Sir.

Cook. I challenge you.

Cl. of Arr. Thomas Piſtol.

Mr. *Piſtol.* I am no Freeholder. *(To which he was ſworn.)*

Cl. of Arr. John Hunt.

Mr. *Hunt.* My Lord, my Name is miſtaken; my Name is *William Hunt.*

L. C. J. Treby. Then you muſt go on to another.

Cl. of Arr. John Hardret.

Mr. Hardret. I am no Freeholder of 10 *l.* a year. *(To which he was ſworn.)*

Cl. of Arr. John Hammond.

Cook. Are you a Freeholder, Sir, of 10 *l.* a year, in *London*?

Mr. Hammond. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. Hammond. No Sir.

Cook. I challenge you.

Cl. of Arr. John Cooper.

Cook. I accept of him. *(He was Sworn.)*

Cl. of Arr. Joſſelin Roberts.

Cook. Sir, are you a Freeholder within the City of *London* of Ten pound a year?

Mr. Roberts. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. Roberts. No, Sir.

Cook. I challenge you.

Cl. of Arr. Jonathan Micklethwait.

Cook. I have nothing to ſay againſt him. *(He was ſworn.)*

Cl. of Arr. Richard Chiſwell.

Cook. Sir, are you a Freeholder within the City of *London* of Ten pound a year?

Mr. Chiſwel. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. Chiſwell.

Mr. Chiſwell, No, Sir.

Cook. I challenge you.

Cl. of Arr. Joſeph Thompſon.

Cook. Sir, are you a Freeholder of the City of *London*, of Ten pound a year?

Mr. Thompſon. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. Thompſon. I was Returned upon the Grand Jury, but did not ſerve.

Cook. I challenge you.

Cl. of Arr. Edward Brewſter.

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten pound a year?

Mr. Brewſter. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. Brewſter. No, Sir.

Cook. I challenge you.

Cl. of Arr. George Gooday.

Mr. Gooday. My Lord, I am no Freeholder. *(To which he was ſworn.)*

Cl. of Arr. Abraham Hickman.

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten pound a Year?

Mr. Hickman. Yes, Sir.

Cook Were you of the Grand Jury that found the Bill againſt me.

Mr. Hickman. No, Sir.

Cook. I challenge you.

Cl. of Arr George Grove.

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten pound a Year?

Mr. Grove. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. Grove. No, Sir.

Cook. I challenge you.

Cl. of Arr. Nathaniel Wyerſden.

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten pound a Year?

Mr. Wyerſden. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. Wyerſden. No, Sir.

Cook. I challenge you. My Lord, I deſire to know how many I have excepted againſt.

Cl. of Arr. One and thirty.

Mr. Burleigh. Write, write.

Cl. of Arr. Samuel Blewitt.

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten pound a Year?

Mr. Blewitt. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. Blewitt. No, Sir.

Cook. I challenge you.

Cl of Arr. John Wolfe.

Cook. I accept of him. *(He was ſworn.)*

Cl. of Arr. William Smith.

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten pound a Year?

Mr. Smith. Yes, Sir.

Cook.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. Smith. No, Sir.

Cook. I challenge you.

Cl. of Arr. John Bickly.

Mr. Bickly. My Lord, I don't look upon my ſelf as a Freeholder?

L. C. J. Treby. Why ſo, Sir.

Mr. Bickly. I have a Leaſe for One and fifty Years, my Lord, of my Houſe, and there is a very little piece of Ground adjoining to it that was very convenient for me to lay to my Leaſe; there is no way to it but through my Houſe; it is a thing that never was let for any thing, and it is not worth the Building.

L. C. J. Treby. What Eſtate have you in it? Do you pay a Ground-Rent for it?

Mr. Bickly. My Lord, I bought that little piece of Ground for the Conveniency of my Leaſe.

L. C. J. Treby. But did you purchaſe it for Term of Years, or to you and your Heirs?

Mr. Bickly. Nay, I bought it for ever, my Lord.

L. C. J. Treby. Then you have a Freehold in it. What's the Value of it?

Mr. Bickly. Truly very little, my Lord.

L. C. J. Treby. I don't know any Body can judge of the Value of it but your ſelf. Is it worth Ten Pound a Year?

Mr. Bickly. My Lord, I can't Value it at Ten Pound a Year, it never coſt me Forty Pound.

L. C. J. Treby. Then for Eſtate you are well enough, but for Value you are a little under.

Cl. of Arr. Thomas Collins.

Cook. I accept of him. (*He was ſworn.*)

Cl. of Arr. John Watſon.

Cook. I do not Challenge him. (*He was ſworn.*)

Cl. of Arr. Benjamin Hooper.

Cook. I accept of him. (*He was ſworn.*)

Cl. of Arr. John Wells.

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten pound a year?

Mr. Wells. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. Wells. No, Sir.

Cook. I challenge you.

Cl. of Arr. John Hibbart.

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten pound a year?

Mr. Hibbart. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr. Hibbart. No, Sir.

Cook. I challenge you.

Cl. of Arr. Mr. *Cook* you have challenged your full Number. Call *Daniel Wray.* (*He was ſworn.*)

Cl. of Arr. John Pettit. (*He was ſworn.*) *Cryer* Countez.

Henry Sherbrook.

Cryer. One, &c.

Cl. of Arr. John Pettit.

Cryer. Twelve good Men and true, ſtand together and hear your Evidence.

The

The Names of the Twelve ſworn are as follow:

Henry Sherbrook,
John Cullum,
Thomas Shaw,
Richard Young,
John Cooper.
Jonathan Micklethwait,
John Wolfe,
Thomas Collins,
John Watſon,
Benjamin Hooper,
Daniel Wray, and
John Pettit.

Cl. of Arr. Cryer, Make Proclamation.

Cryer. O Yez, If any one can inform my Lord, the King's Juſtices, the King's Serjeant, the King's Attorney-General, or this Inqueſt now to be taken of the High Treaſon whereof *Peter Cook* the Priſoner at the Bar ſtands Indicted, let them come forth and they ſhall be heard, for the now Priſoner ſtands at the Bar upon his Deliverance; and all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth, and give their Evidence, or they forfeit their Recognizance.

L. C. J. Treby. You muſt make room for thoſe Twelve Gentlemen that are ſworn, that they may be at eaſe; and for thoſe that are not ſworn, their Attendance may be ſpared.

Cl. of Arr. Peter Cook, hold up thy Hand. (Which he did.) Gentlemen, you that are ſworn, look upon the Priſoner, and hearken to his Cauſe. He ſtands Indicted in *London*, by the Name of *Peter Co k*, late of *London*, Gentleman; For that whereas an Open and Notoriouſly Publick and moſt Sharp and Cruel War, for a great while hath been, and yet is by Land and by Sea, Carried on, and Proſecuted, by *Lewis* the French King, againſt the Moſt Serene, Moſt Illuſtrious and Moſt Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* All which time, the ſaid *Lewis* the French King, and his Subjects, were and yet are Foes and Enemies of our ſaid Lord the King that now is, *William* the Third, and his Subjects, He the ſaid *Peter Co k*, a Subject of the ſaid Lord the King that now is, of this his Kingdom of *England*, well knowing the Premiſes, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, as a falſe Traytor againſt the ſaid Moſt Serene, Moſt Mild and Moſt Excellent Prince, our Sovereign Lord *William* the Third, now King of *England*, his Supreme, True, *Rightful*, *Lawful*, and Undoubted Lord, the Cordial Love, and True and Due Obedience, Fidelity, and Allegiance, which every Subject of the ſaid Lord the King that now is, towards him our ſaid Lord the King, ſhould bear, and of Right is bound to bear, withdrawing, and utterly to Extinguiſh, Intending and Contriving, and with all his Strength Purpoſing and Deſigning the Government of this Kingdom of *England*, under Him our ſaid Lord the King that now is of Right Duly, Happily, and very Well Eſtabliſh'd, altogether to Subvert, Change and Alter, and His Faithful Subjects, and the Freemen of this Kingdom of *England*, into Intolerable and Miſerable Servitude to the aforeſaid French King to Subdue and In-

thrall; the First Day of *July*, in the Seventh Year of the Reign of our said Lord the King that now is, and divers Days and Times, as well before as after, at *London*, in the Parish of St. *Peter Cornhil*, in the Ward of *Limestreet*, Falsly, Maliciously, Deviliſhly, and Trayterously did Compass, Imagine and Contrive, Purpose and Intend, our said Sovereign Lord the King that now is, then his Supreme, True, *Rightful* and *Lawful* Lord, of and from the Regal State, Title, Honour, Power, Crown, Empire, and Government of this Kingdom of *England*, to Depose, Cast down, and Utterly Deprive, and the same our Lord the King to Death and Final Destruction to bring, and the aforesaid *Lewis* the French King, by Armies, Soldiers, Legions, and his Subjects, this Kingdom of *England* to Invade, Fight with, Conquer and Subdue, to Move, Incite, Procure and Assist, and a Miserable Slaughter among the Faithful Subjects of our said Lord King *William*, throughout this whole Kingdom of *England*, to Make and Cause. And further, That the said *Peter Cook*, during the War aforesaid, to wit, the aforesaid First Day of *July*, in the Seventh Year abovesaid, and divers other Days and Times before and after, at *London* aforesaid, in the Parish and Ward aforesaid, to the said Foes and Enemies of the same our Lord the King, did Adhere, and was Assisting: And his aforesaid most Wicked and Deviliſh Treasons, and Trayterous Compassings, Contrivances, Intentions, and Purposes aforesaid, to Fulfil, Perfect, and bring to Effect, and in Prosecution, Performance, and Execution of that Trayterous Adhering, He the said *Peter Cook*, as such a False Traytor, during the War aforesaid, to wit, the same First Day of *July*, in the Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, and divers other Days and Times, as well before as after, there, and elsewhere in *London* aforesaid, Falsly, Maliciously, Advisedly, Secretly, and Trayterously, and by Force and Arms, with one *Robert Chernock*, Sir *John Friend* and Sir *William Parkyns*, Knights, (which said *Robert Chernock*, Sir *John Friend*, and Sir *William Parkyns*, were lately severally Duly Convicted and Attainted of High Treason, in Contriving and Conspiring the Death of our said Lord the King that now is) and with divers other False Traytors to the Jurors unknown, did Meet, Propose, Treat, Consult, Consent, and Agree to Procure from the aforesaid *Lewis* the French King, of his Subjects, Forces and Soldiers, then and yet Foes and Enemies of our said Sovereign Lord *William*, now King of *England*, &c. great Numbers of Soldiers and Armed Men, this Kingdom of *England* to Invade and Fight with, and to Levy, Procure, and Prepare great Numbers of Armed Men, and Troops, and Legions against our said Lord the King that now is, to Rise up and be Formed, and with those Foes and Enemies, at and upon such their Invasion and Entry within this Kingdom of *England*, to Join and Unite, Rebellion and War against our said Lord the King that now is, within this Kingdom of *England*, to Make, Levy, and Carry on the same: our Lord the King so, as aforesaid, to Depose, and Him to Kill and Murther: And further with the said False Traytors, the same First Day of *July*, in the Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, Trayterously did Consult, Consent, and Agree to send the aforesaid *Robert Chernock* as a Messenger from him the said *Peter Cock*, and the same other Traytors, as far as, and into, the Kingdom of *France*, in Parts beyond the Seas, unto *James* the Second, late King of *England*, to Propose to him, and to Request him to obtain from the aforesaid *French* King the aforesaid Soldiers and Armed Men for the Invasion aforesaid to be made, and Intelligence and Notice of such their Trayterous Intentions and Adherings, to the said late King *James* the Second, and the said other Foes and

Enemies,

Enemies, and their Adherents, to give and ſhew, and them to inform of other Things, Particulars, and Circumſtances thereunto Referring, for the Aſſiſtance, Animating, Comforting, and Aid of the ſaid Foes and Enemies of the ſaid Lord the King that now is, in the War aforeſaid: And to Stir up and Procure thoſe Foes and Enemies the readilier, and more boldly, this Kingdom of *England* to Invade, the Treaſons, and Trayterous Contrivances, Compaſſings, Imaginings, and Purpoſes of the ſaid *Peter Cook* aforeſaid, to Perfect and Fulfil; alſo the ſame Firſt day of *July*, in the Seventh Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, He, the ſaid *Peter Cook*, divers Horſes, and very many Arms, Guns, Muskets, Piſtols, Rapiers, and Swords, and other Weapons, Ammunition, and Warlike Matters, and Military Inſtruments, Falſly, Maliciouſly, Secretly, and Trayterouſly, did Obtain, Buy, Gather together, and Procure; and to be Bought, Gathered together, Obtained, and Procured, did Cauſe, and in his Cuſtody had, and detained to that Intent, To uſe the ſame in the ſaid Invaſion, War, and Rebellion againſt our ſaid Lord the King that now is, Him, our ſaid Lord the King, of and from the Regal State, Crown, and Government of this Kingdom of *England*, to Depoſe, Caſt down, and Deprive, and Him to Kill and Murther; and the Deſigns, Intentions, and all the Purpoſes of him the ſaid *Peter Cook* aforeſaid, to Fulfil, Perfect, and fully to bring to Effect, againſt the Duty of his Allegiance, and againſt the Peace of our ſaid Sovereign Lord that now is, his Crown and Dignity, as alſo againſt the Form of the Statute in ſuch Caſe made and provided.

Upon this Indictment he has been Arraigned, and thereunto has pleaded Not Guilty, and for his Tryal hath put himſelf upon God and his Country, which Country you are, your Charge is to inquire whether he be guilty of the High Treaſon whereof he ſtands Indicted, or not guilty; if you find him guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the time of the High-Treaſon committed, or at any time ſince; if you find him not guilty, you are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels as if you had found him Guilty; if you find him not Guilty, nor that he did fly for it, you are to ſay ſo, and no more, and hear your Evidence.

Mr. Mompeſſon. May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, this is an Indictment for High Treaſon againſt *Peter Cook*, the Priſoner at the Bar, and the Indictment ſets forth, That whereas there has been an open and cruel War for a long time, and ſtill is between his Majeſty King *William*, and the French King, the Priſoner at the Bar not weighing the Duty of his Allegiance, the Firſt of *July* in the Seventh year of the King's Reign, Did Compaſs and Intend to Depoſe and Deprive the King of the Title, Honour, and Dignity of the Imperial Crown of this Realm, and likewiſe to put the King to Death, and did adhere to the King's Enemies; and to fulfil theſe Treaſons, he did Conſult with *Chernock*, and ſeveral other Traytors who were mentioned there, and ſome of whom have been found Guilty of Treaſon, and executed for it, to ſend over to the late King *James*, to perſwade the French King to ſend over Soldiers and Arms to invade this Kingdom, and to raiſe an Inſurrection and Rebellion in it, and to Deprive and put the King to Death, and to compleat theſe Treaſons, it further ſets forth, That the Priſoner at the Bar did provide ſeveral Arms and Horſes, and this is

laid

laid to be againſt the Duty of his Allegiance, againſt the King's Peace, Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided; to this he has pleaded Not Guilty, and for Tryal put himſelf upon the Country, and, Gentlemen, if we prove theſe Facts laid in the Indictment, its your Duty to find him Guilty.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, the Priſoner at the Bar ſtands Indicted for High Treaſon.

Cook. My Lord Chief-Juſtice, if your Lordſhip pleaſes, before the Witneſſes are Examined againſt me, I intreat you that they may not be both in Court together, that one may not hear what the other ſwears, tho' I ſuppoſe it is the ſame thing; for they have been together both now and the laſt day.

L. C. J. Treby. Mr. Cook, I muſt tell you it is not neceſſary to be granted for asking; for we are not to diſcourage, or caſt any Suſpicion upon, the Witneſſes, when there is nothing made out againſt them; but it is a Favour that the Court may grant, and does grant ſometimes, and now does it to you; tho' it be not of neceſſity: they ſhall be examined apart, but at preſent this is not the time of Examination; for the King's Counſel are now to open the Evidence before they examine the Witneſſes; but when the time comes for the Witneſſes to be called and examined, the Court will, in favour to you, take care that your Requeſt be complied with.

Mr. Att. Gen. May it pleaſe your Lordſhip, the Priſoner ſtands Indicted for High Treaſon, in Compaſſing and Imagining the Death and Deſtruction of his Majeſty, and likewiſe in adhering to his Majeſty's Enemies, theſe are the Treaſons ſpecified in the Indictment: the *Overt Acts* that are laid to prove theſe Treaſons are, That he with ſeveral other Traitors, named in the Indictment, did Meet and Conſult, and agree to ſend over *Chernock* into *France*, to invite the French King to make an Invaſion upon the Kingdom, and did provide Arms for that purpoſe.

Gentlemen, the nature of the Evidence that you will have produced to prove the Priſoner Guilty of theſe Treaſons lies thus: It will appear to you that there has been for ſome time a Conſpiracy carried on by ſeveral Traytors, and Wicked Perſons, to ſubvert the eſtabliſhed Government of this Kingdom, and deſtroy the Conſtitution of *England*, by a Foreign Invaſion of the French. You will hear that this Conſpiracy was laid wide, and conſiſted of ſeveral parts, one part was that of *Aſſaſſinating* his Majeſty's Royal Perſon, and that was to be done firſt, as a Preparation and Encouragement to the French to invade the Kingdom: the other part was the inviting the French King to *invade* us, and the Priſoner at the Bar is accuſed of being concerned in that part that relates to the *Invaſion* of this Kingdom, by a French Power; and tho' it may be the other part, that of Aſſaſſinating the King, be the Blackeſt part of the Conſpiracy, yet if the Priſoner at the Bar has been ingaged in the inviting a Foreign Power to invade the Kingdom, my Lords, the Judges, will tell you, in Point of Law, that is as much an Overt Act of the Compaſſing the Deſtruction of the King and People of *England*, and the Subverſion of our ancient good Conſtitution, as if he had been concerned immediately in the other part, the Aſſaſſination.

But

But now, Gentlemen, that the Priſoner was ingaged in Inviting the *French* to Invade us, you will hear proved by ſeveral Witneſſes, that there having been a Deſign laſt Year, juſt before his Majeſty went to *Flanders*, to expoſe his own Perſon for our Protection, and the Protection of the Liberties of *Europe*, there was a Conſpiracy to Murder him before he went to *Flanders*, which, it ſeems, they were not ripe for then; but immediately after he was gone to *Flanders*, you will hear there were formal Meetings of ſeveral Gentlemen and Perſons of Quality, among whom the Priſoner at the Barr was one: There was a Meeting in *May*, laſt Year, after the King was gone to *Flanders*; and this was at the *Old King's Head* in *Leaden-Hall-ſtreet*; and there were preſent, my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *William Parkyns*, Sir *John Freind*, Mr. *Chernock*, (all which Three laſt have ſuffered the Puniſhment of the Law for their Treaſon already;) and there were alſo Mr. *Cook*, the Priſoner at the Barr, Mr. *Porter* and Mr. *Goodman*; theſe Men did meet together to conſider of the beſt Ways and Means of Encouraging and Inviting the *French* King with an Armed Force to Invade this Kingdom; They conſidered that That was a proper Opportunity, and did treat of ſeveral Arguments that might perſwade to it: Firſt, that the King was gone to *Flanders*, and ſo was not in Perſon here to Defend us; and that the Troops, to make good ſuch Defence, were in a great meaſure drawn thither, to aſſiſt the Allies againſt the *French* Power; They did think likewiſe, that at that time there was a great Diſcontent and Diſſatisfaction in the Nation, though I think in that they were greatly miſtaken; and I believe and hope they will always find themſelves ſo, to think that the People of *England* are ſo little ſenſible of that which is the means of their Preſervation, as to hearken to any Diſcontents to Incourage a *French* Power to come into *England* to deſtroy our Religion and Liberties; that indeed they did apprehend, though they were miſtaken, and I believe they always will, when they go upon that ground.

Gentlemen, Theſe Perſons thinking this a proper Opportunity, did agree to ſend a Meſſenger into *France* upon this Meſſage, To go to the late King *James*, and perſwade him to deſire and prevail with the *French* King to aſſiſt him with Ten thouſand Men, 8000 Foot, 1000 Horſe, and 1000 Dragoons; and to incourage him, they promiſed their Aſſiſtance here, as ſoon as he came over; and undertook, that between them, they could furniſh, and wou'd raiſe 2000 Horſe to meet him at his Landing, and joyn upon ſuch an Invaſion.

Gentlemen, At this Meeting this was agreed upon by all that were there, whereof the Priſoner was one; and they did agree to ſend Mr. *Chernock*, (who has ſince been executed, and a principal Incourager of the Deſign, and Actor in it;) he was the Meſſenger that was appointed to go upon this Errand, and Mr. *Chernock* was reſolved to go, but deſired another Meeting of theſe Gentlemen, to know if they continued in their former Reſolution, that he might have all the Aſſurance that was Reaſonable to give the *French* King Incouragement to make the Invaſion: Accordingly another Meeting was had of moſt of the ſame perſons that were at the Meeting before; particularly the Priſoner at the Barr was at that ſecond Meeting, which was in *Covent-Garden* at one Mrs. *Mountjoy*'s, who keeps a Tavern next door to Sir *John Fenwick*'s Lodgings; there they met upon the ſame Deſign, and upon Conſultation had, and the Queſtion ask'd, they did agree to continue in the former Reſolution, and upon that immediately Mr. *Chernock* went into *France* to ſollicit Forces from thence to Invade us; but it happ'ned, as it ſeems, that the *French* King's Forces were otherwiſe imployed, ſo that he cou'd not ſpare ſo many at that time; and this Return was brought by *Chernock* to the Gentlemen that imployed him; That he had ſpoke with the late King, who gave him that An-

ſwer, That the *French* King cou'd not ſpare ſo many Men at that time, but he thank'd them for their Kindneſs.

Gentlemen, This will be the nature of Our Evidence, to ſhow, that the Priſoner at the Barr was concerned in that part of the Conſpiracy which relates to the *French* Invaſion; and if he be guilty of that, in point of Law, he is as much guilty of the Conſpiracy, to Depoſe and Murder the King, as if he had been concerned in the other part of Aſſaſſinating his Royal Perſon; and I believe no body can think that thoſe that were to act in the Aſſaſſination, wou'd have attempted to ingage in ſuch a deſperate Deſign, if it had not been for the Incouragement of the *French* Invaſion that was to ſecond them afterwards, if they ſucceeded; ſo that no body can extenuate the Crime of the Invaſion, becauſe as to the Horridneſs of the Attempt, it is leſs Black than the other; they are both Crimes of a very high nature, and equally High-Treaſon; and if we prove the Priſoner Guilty of this part, we hope you will find him Guilty.

Mr. Soll. Gen. My Lord, we will call our Witneſſes and prove the Matter, as it has been opened. Call Captain *Porter* and Mr. *Goodman.*

Mr. Serj. Darnall. Now, my Lord, we muſt deſire that That may be done which our Client deſired before, and which your Lordſhip was favourably pleaſed to promiſe, that the Witneſſes may be examined a-part.

L. C. J. Treby. Let it be ſo: Who do you begin with?

Mr. Soll. Gen. We begin with Captain *Porter*, my Lord.

L. C. J Treby. Then let Mr. *Goodman* withdraw.

Mr. Baker. Let Mr. *Goodman* go up Stairs, and we will call him preſently.

Mr. Soll. Gen. Swear Captain *Porter:* (which was done.) Captain *Porter*, Do you know Mr. *Cook*, the Priſoner at the Barr?

Capt. Porter. Yes, my Lord.

Mr. Soll. Gen. Do you remember a Meeting of ſome Gentlemen at the *King's-Head* Tavern in *Leaden Hall-ſtreet?*

Capt. Porter. Yes, I do, Sir.

Mr. Soll. Gen. Then pray give an Account of the Company that were there, the Time when, and what paſs'd.

Capt. Porter. My Lord, the laſt Year we had two Meetings; the Firſt was in *May*, the other was the latter end of *May*, or the beginning of *June*; the Firſt was at the *King's-Head* in *Leaden-Hall-ſtreet*; there were my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *John Freind*, Sir *William Parkyns*, Mr. *Chernock*, Mr. *Cook* and my ſelf; Mr. *Goodman* came in after Dinner; at this Meeting it was Conſulted which was the beſt way and the quickeſt to Reſtore King *James*, and haſten his Return into *England*; ſeveral Diſcourſes and Propoſals there were; at laſt it was agreed to ſend Mr. *Chernock* to the late King to borrow of the *French* King Ten thouſand Men, 8000 Foot, 1000 Horſe, and 1000 Dragoons, to be ſent over into *England* to aſſiſt the King's Reſtoration. Says Mr. *Chernock* thereupon, This the King can do without your ſending, and I wou'd not go upon a fooliſh Errand. What will you do to Aſſiſt in this Matter? the Company deſir'd him to promiſe King *James*, That if he wou'd ſend word when he Landed, and where, they wou'd be ſure to meet him at his Landing with a Body of 2000 Horſe.

Mr. Att. Gen. Was the Priſoner at the Barr in the Company, and preſent at this Reſolution?

Capt. Porter. Yes, he was.

Mr. Att. Gen. Did all the Company agree to it?

Capt. Porter. Yes, they did.

Mr. Att. Gen.

Mr. Att. Gen. What ſigns were there of their Agreement? did they ſtand up ſeverally and declare their Agreement, or how?

Capt. Porter. My Lord of *Aylesbury* and Sir *John Fenwick* did riſe up, and deſired Captain *Chernock*, that he wou'd go upon this Errand: And when the Queſtion was ask'd ſeverally of all there preſent by Mr. *Chernock*, Whether he might aſſure the King of what they had told him? Every one ſaid Yes, you may; and Mr. *Cook* kneel'd indeed upon a Chair, and ſaid Yes, you may.

Mr. Att. Gen. Did he give his Conſent to it?

Capt. Porter. Yes, he anſwer'd in thoſe very words.

Mr. Soll. Gen. Do you remember any Meeting of any Company at Mrs. *Mountjoy*'s?

Capt. Porter. Yes, that was a ſecond Meeting.

Mr. Soll. Gen. Pray tell my Lord and the Jury, how you came to meet there then, what Company were there, and what paſs'd.

Capt. Porter. Mr. *Chernock* deſir'd another Meeting, to ſee if the Gentlemen kept to their former Reſolution; and we met at Mrs *Mountjoy*s eight or ten Days after, and there were moſt of the Company that was at the firſt Meeting, and there all that were preſent did aſſure Mr. *Chernock* that they kept to their firſt Reſolution, and wou'd abide to what was agreed upon at the former Meeting.

Mr. Att. Gen. Who were preſent at the ſecond Meeting?

Capt. Porter. The Priſoner at the Barr was there at that ſecond Meeting.

Mr. Att. Gen. What was that ſecond Meeting for, do you ſay?

Capt. Porter. It was to give Mr. *Chernock* aſſurance, that we were agreed to ſtand by the Reſolution taken at the firſt Meeting.

Mr. Att. Gen. What did Mr. *Chernock* do afterwards?

Capt. Porter. I went away from them; there was Sir *William Parkyns*, Sir *John Freind* and Captain *Chernock* went to the *Queens-Head* Tavern in *Fleet-ſtreet*, and Captain *Chernock* told me he wou'd go in two or three Days, and I believe did ſo.

Mr. Att. Gen. When did you ſee him afterwards?

Capt. Porter. When I was a Priſoner upon the account of the Riot in *Drury-lane*; about two or three Days after I came to *Newgate* he came to ſee me, and ſaid he had been in *France*; and that King *James* thank'd us for our kind Offer, but the *French* King cou'd not ſpare ſo many Men that Year; and he told me he had been with my Lord of *Aylesbury*, and the reſt of the Gentlemen that had imploy'd him to go over, and had delivered them the ſeveral Meſſages that he was ordered to do from the King.

L. C. J. Treby. Captain *Porter*, who were preſent at that ſecond Meeting, do you ſay?

Capt. Porter. My Lord of *Aylesbury*, Sir *John Freind*, Sir *William Parkyns*, Captain *Chernock*, Mr. *Cook* and my ſelf; I cannot tell whether my Lord *Montgomery* or Mr. *Goodman* were at that ſecond Meeting or no.

Mr. Att. Gen. Captain *Porter*, I wou'd ask you another Queſtion: You were concerned in the Aſſaſſination with thoſe other Perſons that Ingaged in it; Pray what Safety did you propoſe to your ſelves after the Aſſaſſination was over?

Capt. Porter. My Lord, I ask'd Sir *George Barclay* what we ſhou'd do after the Fact was committed: Says he, You need fear nothing, I will go away that night, I have a Ship ready, and the King will be Landed in five or ſix Days afterwards; if you'll but keep your ſelves cloſe for ſo many days, all will do well.

Mr. Soll. Gen.

Mr. Soll. Gen. If the Priſoner or the Counſel will ask him any Queſtions, my Lord, they may do it.

Sir B. Shower. Pray Sir, can you recollect what time a day this was that this Debate and Reſolution were had at the *Old King's-Head* in *Leaden-Hall-ſtreet?*

Capt. Porter. Truly Sir *Bartholomew*, I can't tell.

Sir B. Shower. Pray, by what means do you recollect that this was in the Month of *May?*

Capt. Porter. Becauſe Captain *Chernock* was abſent at the *Dog-Tavern* Riot, which was the Tenth of *June.*

Sir B. Shower. Was it not in *April?*

Capt. Porter. No, Sir; to the beſt of my Remembrance it was in *May.*

Sir B. Shower. What makes you think it was in *May* rather than *April?*

Capt. Porter. I have told you Sir, becauſe both Meetings were before the *Dog-Tavern* Riot, the Tenth of *June*, and Mr. *Chernock* was not there at that time; but he told me afterwards he had been in *France*, and there were eight or ten Days difference between the two Meetings.

Mr. Att. Gen. My Lord, if they have done with him, I wou'd ask him one Queſtion, to ſettle this Matter in point of Time. Capt. *Porter*, Was the King gone to *Flanders* when you had theſe Meetings?

Capt. Porter. The King was gone, Sir, before the firſt Meeting.

Mr. Att. Gen. The King did not go till ſeveral days in *May*; was Mr. *Goodman* there?

Capt. Porter. He was at the firſt Meeting, but I can't tell whether he was at the ſecond or no.

Mr. Serj. Darnall. Pray what time was Mr. *Goodman* there at the firſt Meeting?

Capt. Porter. He came up after Dinner at the firſt Meeting.

Mr. Baker. Then call down Mr. *Goodman*, who came in, and was ſworn.

Mr. Soll. Gen. Mr. *Goodman*, Pray will you give my Lord and the Jury an Account what you know of an intended Invaſion upon this Kingdom; what were the Circumſtances of it, and who were concerned in it.

Mr. Goodman. My Lord, About the middle of *May* laſt, or thereabouts, Captain *Porter* ſent to me, and told me there was a Meeting of ſome Gentlemen of our acquaintance at the *King's-Head* in *Leaden-Hall-ſtreet*; and he deſired me that I wou'd be there, becauſe it was about buſineſs: I told him I did not know whether I cou'd be there at Dinner; but however, I wou'd not fail of coming thither after Dinner; and accordingly I came. When I came into the Houſe, I ſent up my Name to Captain *Porter*, and he came down and brought me up ſtairs, and there I ſaw my Lord *Montgomery*, my Lord of *Aylesbury*, Sir *John Fenwick*, Sir *William Parkyns*, Sir *John Freind*, Mr. *Chernock*, and that Gentleman at the Barr, Mr. *Cook*: When we were there, the Diſcourſe was, That we did think King *James*'s coming was Retarded, and we wou'd do any thing to facilitate his Reſtoration.

Cook. My Lord Chief Juſtice.

L. C. J. Treby. What ſay you, Mr. *Cook?*

Cook. My Lord, If your Lordſhip pleaſes, I deſire the Jury may not be talk'd to by any body; and I underſtand there are ſome talking with the Jury.

L. C. J. Treby. Fye upon it, we will lay any body by the Heels that do ſo, they muſt neither be Diſturbed, nor Inſtructed by any body.

Cook. My

Cook. My Lord, I am inform'd there was ſome-body talking to them, and telling them this was the ſame Caſe with Sir *John Freind.*

L. C. J. Treby. Do you but ſhow us the Man, and we will find another place for him; we will ſend him to the Goal, I'll aſſure you.

Mr. Burleigh. This Gentleman, my Lord, did hear ſuch a Diſcourſe to the Jury (pointing to a Gentleman there) who ſtood up.

My Lord, I cannot poſitively ſwear to the Man, but I did hear ſome Diſcourſe that it was the ſame Evidence as in the former Tryal.

L. C. J. Treby. If you can ſhow us who it was, we will take care to puniſh him: I ſuppoſe he ſtands Corrected; and if we knew who he was, he ſhou'd ſtand Committed.

Mr. Att. Gen. Pray, Mr. *Goodman*, begin again, and tell what paſs'd at that Meeting, becauſe the Jury were interrupted from hearing by People's buzzing about them.

Mr. Goodman. My Lord, When Captain *Porter* brought me up into the Room, I told you what Gentlemen I found there; after we were ſet down, there was a Conſultation, that conſidering the *French* King's Wars Retarded the Affair of ſending back King *James*, and the means of Reſtoring him to the Crown, it was fit we ſhou'd find out ſome way or method to facilitate his Reſtoration, and it was thought convenient to have a Meſſenger to ſend over to King *James* with Propoſals for that purpoſe; to this effect, as near as I remember, That if King *James* cou'd prevail with the *French* King to furniſh Ten thouſand Men, whereof 8000 to be Foot, 1000 Horſe, and 1000 Dragoons, we wou'd endeavour to meet him at the Head of as many Horſe as we cou'd raiſe, to ſuſtain thoſe Forces at their Landing: This was Debated, in order to come to a Reſolution; and much Difficulty there was how many the Number ſhould be; the Man pitch'd upon to be ſent, was Mr. *Chernock*; and after ſome Debate, how many Thouſand Horſe could be raiſed: Says Mr. *Chernock*, Don't let me go over upon a fooliſh Errand, but let me know what I have to ſay exactly: Thereupon it was concluded by all, that Two thouſand Horſe ſhould be the Number we cou'd promiſe, and the King might depend upon them; and if we brought more, ſo much the better; and Sir *John Freind* ſaid, I believe he has ſo many Friends here, that if he came himſelf, he might be welcome; but that we did not think fit to truſt to; and no body wou'd adviſe any ſuch thing: when the Reſolution of the Thing and the Number was thus fix'd, Mr. *Chernock* ask'd whether it were with all our Conſents? and that he might aſſure the King, that this was our Reſolution thereupon? we all roſe up, and ſaid to him, *Yes, you may, yes, you may*, every one particularly; and I remember one thing particularly concerning the Priſoner Mr. *Cook*, That he kneel'd upon the Chair when he ſaid *Yes, you may*; and his Elbows were upon the Table: This is all that I know of that Meeting. There was to be another Meeting, as Captain *Porter* told me; but I had buſineſs in the City: but whatſoever he promiſed on my behalf, as to the Quota of Men, I wou'd be ſure to make it good; and I was not at the ſecond Meeting.

Mr. Att. Gen. Did you ſee Mr. *Chernock* afterwards?

Mr. Goodman. Yes, I did, when he came back; and he told me the Thing was not accepted, for the *French* King cou'd not ſpare Men, and that he had been with the ſeveral Gentlemen to carry them the Compliments that he had in charge from King *James*, who returned them Thanks for their good Affection; and among the reſt, he did me the Honour to return me Thanks too.

Sir B. Shower. Pray, Mr. *Goodman*, let me ask you a Queſtion: When was it that you ſaw Mr. *Chernock* after this?

Mr. Goodman. It was in *Arundel-ſtreet*, at his Lodgings.

Sir B. Shower. But I ask you, Sir, when it was? Was it before or after the Tenth of *June*?

Mr. Goodman. It was after the Tenth of *June*, Sir.

Sir B. Shower. How long after, pray?

Mr. Goodman. I believe it was a Month after the Tenth of *June*.

Sir B. Shower. Did you ſee him here in *England* before Mr. *Porter* was Diſcharged from the Riot, and came out of *Newgate*?

Mr. Goodman. I believe I did ſee him before Capt. *Porter* was Diſcharged, long.

Mr. Serj. Darnall. Who were the Perſons that were preſent at that Meeting?

Mr. Goodman. My Lord *Montgomery*, my Lord of *Aylesbury*, Sir *John Fenwick*, Sir *John Freind*, Sir *William Parkyns*, Mr. *Chernock*, Capt. *Porter*, and the Priſoner at the Barr, Mr. *Cook*.

Mr. Serj. Darnall. Were you at Dinner with them, Sir?

Mr. Goodman. No, I came in after Dinner.

Mr. Serj. Darnall. Pray what Houſe was it, do you ſay, this Meeting was at?

Mr. Goodman. It was at the *King's-Head* in *Leaden-Hall-ſtreet*.

Sir B. Shower. Can you tell what day of the Week it was?

Mr. Goodman. No, nor the day of the Month.

Sir B. Shower. Was you ever in the Company of theſe Gentlemen at any other time?

Mr. Goodman. No, this was the only time that I heard of this Conſultation; I was not at the ſecond Meeting.

Cook. If your Lordſhip pleaſes, may I ask Mr. *Goodman* any Queſtions?

L. C. J. Treby. Yes, by all means ask him what you will.

Cook. Mr. *Goodman*, You are upon your Oath: but did you ever hear me ſpeak ten words in your life? was you ever in my Company in any Houſe, before or ſince?

Mr. Goodman. Yes, Sir; I was in your Company at the *Cock* in *Bow-ſtreet*, where you came in accidentally.

Cook. Did you ever hear me talk of the Government, or any thing of that nature?

Mr. Goodman. What the Diſcourſe was of, I cannot particularly ſay, but I am certain you was there: And as to the Conſultation that I now ſpeak of, I remember very well you gave your Conſent in that manner as I have told the Court.

Mr. Att. Gen.

Mr. Att. Gen. My Lord, we have done at the preſent.

L. C. J. Treby. Then, Brother *Darnall*, what ſay you for the Priſoner?

Mr. Serj. Darnall. May it pleaſe your Lordſhip, and you Gentlemen of the Jury: I am of Counſel, in this Caſe, for the Priſoner at the Bar, Mr. *Cook*, who ſtands Indicted of a very great Offence, no leſs, Gentlemen, than High-Treaſon; and if he be Guilty, his Puniſhment will be as great: But becauſe the Puniſhment and the Offence are both very great, the Law requires exact poſitive Proof, and that by two credible Witneſſes. There have been two indeed that have been produced to you; and if you believe both of them, after what we ſhall offer to you againſt them; and if what they ſwear be true, the Priſoner is Guilty: But if we ſatisfie you that either of them is not to be credited, ſo that you do not believe both of them, he muſt be acquitted.

There is no doubt, Gentlemen, but that here has been a Villanous Horrid Plot; there is no queſtion of it; and it was, as it has been opened, baſely to Aſſaſſinate one of the braveſt Men living; and to make the happieſt People in the World, if they know when they are ſo, the moſt miſerable People upon Earth, by bringing them under *French* Tyranny and Slavery. Many of the Traytors have been brought to juſt Puniſhment for this Treaſon; nay, they have own'd the Fact at their Death's, ſo that there is no queſtion of the Truth of it; And therefore, Gentlemen, every honeſt Man will endeavour to bring ſuch as are plainly Guilty, of ſuch an abominable Conſpiracy, to juſt Puniſhment; but yet they will be as carefull not to let an innocent Man ſuffer; that, Gentlemen, every honeſt Man will take care of, and eſpecially ſuch as are upon their Oaths: It concerns a Jury highly to be ſatisfied, that he is not Innocent, whom they bring in Guilty; for 'tis better that twenty guilty Men ſhou'd eſcape, than one innocent Man ſuffer.

But, Gentlemen, if my Brief be true, we ſhall give you ſuch an Account of one of theſe Witneſſes; firſt, as to the Man himſelf; that he is not a Man to be credited as a Witneſs; and then beſides that, as to the Evidence he gives in this Caſe; (I ſay, if my Brief be true) it is falſe, and we ſhall prove it ſo; and when you have heard our Evidence, if you are ſatisfied that one of theſe Witneſſes is not to be credited, or that what he ſwears is not true, you are to acquit the Priſoner.

Gentlemen, Here has been one Mr. *Goodman* produced as a Witneſs, one that never was produced before at the Tryal of any of thoſe that have ſuffered, ſo that the truth of their Guilt does not at all depend upon his Evidence, nor does it give any credit to it. This is this Gentleman's firſt Entry upon this Stage; and yet (if my Brief be true) this is not the firſt bloody or cruel Part that he has Acted; for we have a Record of Conviction againſt him, whereby it will appear to you, that he was Indicted (for Endeavouring to Poiſon two Great Dukes) for giving forty Guinea's to an *Italian* Emprick, one *Amidei*, and promiſing Two hundred Pounds more when it was effected, to Poiſon the late Duke of *Grafton* and the preſent Duke of *Northumberland*; and we ſhall ſhew you, that he was Convicted of it, and Fined a Thouſand Pound for the Offence; which, conſidering the meanneſs of his Circumſtances at that time, was as much as Twenty thouſand Pounds; for he could as well have

have paid Twenty, as One then; and it appears too, that Mr. *Goodman* (nay, it will not be denied by him himſelf) was in this Horrid Plot; and he that wou'd be concern'd to Poiſon two Dukes in a Family, to which he had ſo many Obligations ———

Mr. Goodman. My Lord, I deſire leave to ſpeak to this Matter that the Serjeant mentions.

Mr. Serj. Darnall. Pray, Sir, let me go on; you may talk anon; I have ſeen the Copy of the Record of Conviction, and have it ready to produce.

Mr. Att. Gen. Mr. *Goodman*, be quiet, and ſtay till by and by; you will be defended, no doubt, on it; but in the mean time let them go on, and don't interrupt them.

Mr. Serj. Darnall. I ſay, my Lord, he that wou'd be concern'd in ſo vile an Act, as a Contrivance to take away the Lives of two great Dukes, (who were, in effect, his young Maſters,) that he ſhou'd go to Poiſon them in a Family to which he had been ſo much obliged; and then, he that wou'd be concerned in ſo Horrid a Plot as this was, to deſtroy his Country, and take away the Life of the King; ſure it will be no difficult thing to think that this Man will not ſtick at the little Priſoner's Life at the Barr, eſpecially when he has ſo great a temptation to it, as to ſave his own Life by it.

But perhaps ſome of you may doubt whether it is to ſave his own Life or no: But I believe there are none of you would give any credit to him, if you thought ſo: Therefore, to ſatisfie you of that Fact, we ſhall produce you Evidence of his own Opinion of that matter, beſides the General known Circumſtances he lay under; As, That he was long in Priſon before he charged the Priſoner with any thing, and the Priſoner was at Liberty, went every day abroad for a Week after Mr. *Chernock's* Tryal, and never abſconded one Minute, but lived publickly, openly and viſibly to all his Friends, and all Strangers: But beſides, Gentlemen, that Mr. *Goodman* knew he muſt dye, and juſtly and deſervedly for this Horrid Plot and Treaſon himſelf; and had no other way left to ſave his Life, but to come in thus as an Evidence and an Accuſer, which we think will ſhake his Credit with you.

I ſay, beſides all this, (if my Brief be true,) we ſhall prove that he has ſaid himſelf, That either he muſt Hang *Peter Cook*, or he muſt be Hang'd himſelf. Thus, Gentlemen, he ſwears to ſave his own Life, by taking away another's.

This, Gentlemen, is as to the Man himſelf, that he is not to be credited. But now further, as to the Evidence that he has given; He tells you that he came into the Tavern in *Leaden-Hall-ſtreet*, and that there he found ſuch Company; he owns he came in after Dinner; and that the other Gentleman, Mr. *Porter*, owns too; he ſays there were preſent at this Meeting, my Lord *Montgomery*, my Lord of *Aylesbury*, Mr. *Cook*, and ſeveral other Gentlemen; but (if my Brief be true) we ſhall prove by three Witneſſes, that he was not there till they were gone; and that will make an end of all the pretence of his Evidence.

Mr. Att. Gen.

Mr. Att. Gen. Nay, then we ſhall never have done.

Mr. Serj. Darn. I'll aſſure you, Sir, I have the Names of Three Witneſſes in my Brief, to prove that my Lord of *Aylesbury*, my Lord *Montgomery*, and Mr. *Cook*, were gone before he came in, tho' if any, or either of them were gone, it deſtroys his Teſtimony; and if we prove this to you, I wou'd be loath to be one of the Jury that ſhould take away the Priſoner's Life upon this Evidence; no, if he were the vileſt Man alive, and much leſs the Life of the Priſoner at the Bar; for we ſhall prove (if my Brief be true,) he is a Man of Morals, a Man of Virtue, one that has a great Love for his Country; and this we ſhall prove by Evidence undeniable, Perſons of Quality in their Country, ſuch as ſerve their Country in Parliament, as their Repreſentatives; we ſhall ſhew it by ſuch Evidence, that there will be no Room to doubt of it: He is a Man without any Stain or Blot upon him, till this Accuſation; he is the eldeſt Son of his Father, and Heir to a great Eſtate; his Father is a great Officer, and a great Getter under this Government; and can it be imagin'd, or believ'd, that ſuch a Man would be guilty of the worſt of Treaſons, to deſtroy the Religion he profeſſes, to over-turn the State, to ruine his own Eſtate, himſelf and his Poſterity, which muſt be the Conſequence of it? Nay, if two good Witneſſes cou'd be produc'd to teſtifie it, and if we had not had ſo much to take off the Credit of *Goodman*, I cou'd hardly believe it of any Man that was in his right Senſes; he muſt have been a Mad-man if he had done it, one that ſtood ſo well with the preſent Government, and of a Family never tainted with Diſloyalty.

Certainly, Gentlemen, when we make out this to you againſt Mr. *Goodman*, the Priſoner can be in no Danger of his Life, from Mr. *Goodman*'s Evidence, tho' he is an unfortunate Man to come under ſuch an Accuſation; but I cannot believe that any Jury, upon ſuch a Man's Evidence, will brand an honeſt Family with the fouleſt, vileſt, blackeſt Treaſon that ever was hatch'd; no, Gentlemen, you are Men of Ability and Underſtanding, and that is it we relie upon; we doubt not but that you will conſider the Evidence, and conſider your Oaths, and not let the Priſoner's Blood lie at your Doors; therefore we ſhall go on and call our Witneſſes to make out what I have open'd.

Sir B. Shower. My Lord, we deſire to call our Witneſſes, and I ſhall reſerve my ſelf to make ſome Obſervations after we have given our Evidence: Mr. Serj. has open'd as much as we can prove, and we will now produce our Evidence; Firſt we will ſhew the Conviction of *Goodman*: Mr. *Burleigh*, where is the Conviction?

Mr. Burl. Here it is, Sir.

Sir B. Shower, Where had you it, Sir?

Mr. Burleigh, Out of the Treaſury at *Weſtminſter*.

Sir B. Shower. Is it a true Copy, did you examine it there?

Mr. Burleigh. Yes, it is a true Copy, I did examine it with the Record.

Sir B. Shower. Then read it, Mr. *Tanner*.

Cl. of Arr. Reads—*Michaelmas Term: Triceſimo ſecundo Caroli Secundi.*

L. C. J. Treby. Read the Record in *Engliſh* to the Jury.

Cl. of Arr. (Reads). Be it remember'd, that Sir *Robert Sawyer*, Knight, Attorney General of our Lord the King that now is, who for the ſame our Lord the King in this part ſueth, came here in the Court of our ſaid Lord the King, before the King himſelf at *Weſtminſter*, on *Thurſday* next after three Weeks of St. *Michael*, the ſame Term; and for the ſame our Lord

the King, brought here into the Court of our ſaid Lord the King, before the ſaid King, then and there, a certain Information againſt *Cardell Goodman*, late of the Pariſh of St. *Martin* in the *Fields*, in the County of *Middleſex*, Gentleman, which Information follows in theſe Words. *Scilicet*, *Middleſex ſcilicet*, Be it remember'd that Sir *Robert Sawyer*, Knight, Attorney General of our ſaid Lord the King that now is, who for the ſame our Lord the King, in this behalf ſueth, in his own proper Perſon came here into the Court of our ſaid Lord the King, before the King himſelf at *Weſtminſter*, on *Thurſday* next after three Weeks of St. *Michael* that ſame Term, and for the ſame our Lord the King, gives the Court here to underſtand and be inform'd, That *Cardell Goodman*, late of the Pariſh of St. *Martin* in the *Fields*, in the County of *Middleſex*, Gentleman, being a Perſon of a wicked Mind, and of an ungodly and deviliſh Diſpoſition, and Converſation, and contriving, practiſing, and falſely, maliciouſly and deviliſhly intending Death, and Poiſoning and final Deſtruction unto the Right Noble *Henry*, Duke of *Grafton*, and *George*, Duke of *Northumberland*, and that the aforeſaid *Cardell Goodman*, his moſt wicked, moſt impious, and deviliſh Intentions, Contrivances and Practices aforeſaid, to fulfil, perfect, and bring to effect, the thirtieth Day of *September*, in the ſix and thirtieth Year of the Reign of our Lord *Charles* the Second, now King of *England*, &c. and diverſe other Days, and Times, as well before as after, at the Pariſh of St. *Martin* in the *Fields*, in the County of *Middleſex*, with Force and Arms, &c. falſely, unlawfully, unjuſtly, wickedly, and deviliſhly, by unlawful Ways and Means, did ſolicite, perſwade, and endeavour to procure one *Alexander Amydei*, to prepare and procure two Flasks of *Florence* Wine, to be mix'd with deadly Poiſon, for the poiſoning of the aforeſaid Right Noble *Henry*, Duke of *Grafton*, and *George*, Duke of *Northumberland*, and his moſt wicked, moſt impious, and deviliſh Contrivances, Practices and Intentions aforeſaid, to fulfil, perfect and the more to bring to effect, the aforeſaid *Cardell Goodman*, the Day and Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, falſely, unlawfully, unjuſtly, maliciouſly and deviliſhly, did promiſe and agree, to give unto the aforeſaid *Alexander Amydei*, forty Pieces of Guniea-Gold, of the Value of forty Pound, of lawful Money of *England*, if he the ſaid *Alexander Amydei* wou'd prepare, procure and provide, two Flasks of *Florence* Wine, to be mix'd with deadly Poiſon, for the poiſoning of the aforeſaid Right Noble *Henry*, Duke of *Grafton*, and *George*, Duke of *Northumberland*; and if the aforeſaid Poiſon with the Wine aforeſaid to be mix'd, ſhou'd effect the Death of the aforeſaid *Henry*, Duke of *Grafton*, and *George*, Duke of *Northumberland*; that then he the ſaid *Cardell Goodman*, wou'd give unto the ſaid *Alexander Amydei*, the Summ of one Hundred Pounds, and that beyond Sea he wou'd maintain the ſaid *Alexander* all the Days of him the ſaid *Alexander*, to the evil and moſt pernicious Example of all others in the like Caſe offending, and againſt the Peace of our ſaid Lord the King that now is, his Crown and Dignity, &c.——Then here is proceſs pray'd by the Attorney General againſt Mr. *Goodman*, who comes, and by his Attorney pleads not Guilty, and here is Iſſue joyn'd.

Sir B. Shower. Well, ſee for the Verdict.

Cl. of Arr. There was a Tryal at *Nifi Prius*, and the Jury find that the ſaid *Cardell Goodman* is Guilty of the Premiſſes in the Information ſpecify'd, as by the Information is ſuppoſed againſt him.

Sir B. Shower. Now read the Judgment.

Cl.

Cl. of Arr. Thereupon it is conſider'd, that the ſaid *Cardell Goodman* do pay to the King, the Summ of One Thouſand Pounds, for his Fine, impos'd upon him for the Occaſion aforeſaid, and that the aforeſaid *Cardell Goodman* be committed to the *Marſhalſea* of this Court, in Execution for his fine aforeſaid, that he be ſafely kept there, till he pay his Fine aforeſaid; and before that the ſaid *Cardell Goodman*, is deliver'd out of the Priſon aforeſaid, he ſhall give Security to behave himſelf well, during his Life, and alſo ſhall give Security for the Peace to be kept towards the ſaid Lord the King, and all his People, and particularly towards the Right Noble *Henry*, Duke of *Grafton*, and *George*, Duke of *Northumberland*.

Mr. Serj. Darn. So, you hear the Record of the Information, Conviction and Judgment, for a very horrid, abominable Crime.

Mr. Att. Gen. But I deſire they may now go on, and read the whole of the Record.

Cl. of Arr. Reads. And afterwards, to wit, on *Friday* next after eight Days of St. *Hilary*, in the thirty ſixth, and thirty ſeventh Years of the Reign of our ſaid Lord the King that now is, before our ſaid Lord the King at *Weſtminſter* came the aforeſaid Sir *Robert Sawyer*, Knight, Attorney General of the ſaid Lord the King that now is, and acknowledged that the ſaid *Cardell Goodman*, has ſatisfy'd to our ſaid Lord the King that now is, of the Judgment aforeſaid againſt him, in Form aforeſaid given, therefore the ſaid *Cardell Goodman* is thereof acquitted, And ſo forth.

Mr. Serj. Darn. Call Mr. *Charles Edwards*, *William Cock*, *Chriſtopher Crawford*, *Mary Cramford*, and Mr. *Huntley*.

Edwards *appear'd upon a* Habeas Corpus, *directed to the Keeper of* Newgate, *where he was a Priſoner.*

Mr. Baker. Where is the Warrant of his Commitment? what is he committed for?

Tokefeild. He is committed for ſuſpicion of Treaſon, and treaſonable Practices,

Mr. Baker. Is he not committed for High-Treaſon?

Tokefeild. No, Sir, he is not.

Mr. Serj. Darn. What Diſcourſe had you with Mr. *Goodman*, concerning the Priſoner at the Bar, what did you here him ſay?

Mr. Baker. He is not ſworn yet, it ſeems this Gentleman was *Dundee*'s Chaplain in *Scotland*.

Mr. Attorn. Gen. If he be not ſworn, he can give no Evidence.

Mr. Serj. Darn. My Lord, we deſire he may be ſworn.

L. C. J. Treby. Sware him, (which was done).

Mr. Serj. Darn. Pray, Sir, will you tell the Court, and the Jury, what you know of any Diſcourſe of Mr. *Goodman*'s, concerning the Priſoner at the Bar.

Edwards. My Lord, I deſire to know, being ignorant of the Law, whether I am brought here by the common courſe of Juſtice or not?

Mr. Serj. Darn. Sir, we have ſubpena'd you for the Priſoner at the Bar, to give Evidence of the truth of your Knowledge here upon Oath.

L. C. J. Treby. Would you have us tell you how you came here? We ſuppoſe you came by due Proceſs of Law, as a Witneſs.

Edwards. Then, my Lord, I deſire to ſpeak but one Word, that is a ſtrange thing to me to conſider, how Words ſhould be carried away that were privately ſpoken, as if it were to expoſe me to the Reproaches

of all my Friends; it is a thing that I did never expect to hear of again: however, seeing I am called here, and obliged upon my Oath to declare what I know, I, by God's Grace, will to the uttermost of my power, tell what has pass'd in this Matter.

L. C. J. Treby. Don't make any Apologies for telling the Truth; you are obliged by your Oath to do it, and the Court expects it from you.

Edwards. Among other Discourses that pass'd betwixt Mr. *Goodman* and me, I ask'd him when Mr. *Cook* was to be arraigned, and when he was to be tryed; says he, He is to be arraigned upon *Monday*, and he is to be tryed upon *Thursday*: I ask'd him whether it was for the Assassination-Plot, and he told me, no; for what then, said I, as being concerned in sending Mr. *Chernock* into *France*? Who are the Evidences against him, said I? said he, Capt. *Porter*, and my self; said I, I believe two Witnesses will be found good, or by way of Demonstration in Law; and I pity the poor Gentleman's Case. Says he, He swore against me; how comes it then, said I, that he is not come off, and has not a Pardon, and would divulge no Body else?

L. C. J. Treby. Who had not a Pardon do you mean?

Edwards. Mr. *Cook.* I ask'd how he had not a Pardon; says he, he wou'd give an account of no body else but me, and that was the Reason he had no Pardon; said I to him, who are the Evidences against him? says he, Capt. *Porter*, and my self, and after this, says he, he, or I, must perish, or he, or I, must suffer, I believe the word was suffer; but, says he, 'tis a foolish thing to be hang'd; all that's said of a Man that is hang'd, is, that he hang'd handsomly, or he dy'd bravely, that's all the Discourse that I can remember.

Mr. Serj. Darn. He said it was a foolish thing to be hang'd, and Mr. *Goodman*, it seems, had no mind to be hang'd; and I believe so too: but he must not hang my Client, to save his own life.

Edwards. Now, by the same Oath that I have sworn, I knew nothing of being brought hither, till my words were carry'd away privately from me, and has been consulted of, and return'd to me back again; and I was far from suborning or carrying away a Discourse privately to make any advantage of it.

Mr. Serj. Darn. Now we will call *Crawford*, and *Huntley*, and *Cock*.

Mr. Attorn. Gen. I desire that Gentleman that was last examin'd may not go away.

[*Crawford*, *Huntley*, and *Cock* were sworn.]

Sir. B. Shower. Set up Mr. *Crawford* (which was done) pray, Sir, will you recollect your self; do you remember when my Lord of *Ailesbury* and Capt. *Porter* din'd at the King's-Head.

Crawford. Yes; it was about a twelve month ago.

Mr. Serj. Darn. What Company was there?

Crawford. My Lord of *Ailesbury*, Sir *John Friend*, Sir *John Fenwick*, Sir *William Parkyns*, Capt. *Porter*, and two or three more, I did not know their Names.

Sir. B. Shower. How many were there that din'd there?

Crawford. I think about Eight in all.

Sir. B. Shower. Was the Room shut while they were there, or did the Servants and Drawers, go up and down commonly?

Crawford. Yes they did go up and down commonly.

Sir B. Shower. After Dinner did any body come to them while they were there?

Crawford.

Crawford. No, not during my Lord of *Ailesbury*'s ſtay, and my Lord *Montgomery* went away with him?

Sir. B. Shower. About what time did my Lord of *Ailesbury* go away?

Crawford. I think it was about four a Clock.

Sir. B. Shower. How can you tell it?

Crawford. I did attend upon them the moſt part of the time.

Sir. B. Shower. Did you ſee him go away?

Crawford. Yes, I did.

Sir B. Sh. Was that Gentleman, Mr. *Goodman*, there, when they went away?

Crawford. I did not ſee him there, to my Remembrance; no body came in there before they went away, ſaving their own Servants.

Mr. Serj. Darn. Do you know Mr. *Cook*, the Priſoner at the Bar, was he one of the Gentlemen that were at your Houſe?

Crawford. Yes, I did not well remember or recollect, till I ſaw him on Saturday laſt.

Mr. Attorn. Gen. Was he one that went away?

Crawford. I do not remember truly, Sir.

Mr. Att. Gen. Pray how long was it after Dinner that they went away?

Crawford. I think it was not an Hour.

Mr. Att. Gen. Was you there all the time, from the time of the Dinner?

Crawf. No, not all the while I was not in the Room, but going to and fro.

Mr. Serj. Darn. You ſay Mr. *Goodman* did not come up till after they were gone?

Crawford. No, I did not ſee him.

Mr. Attorn. Gen. Did you ſee him at all?

Crawford. No, I did not ſee him at all.

Mr. Attorn. Gen. Juſt now it was ſaid he did not come till they were gone, and now it ſeemes he did not ſee him at all.

Crawford. I do not know that he was there at all.

L. C. J. Tre. But, Brother *Darnall*, you open'd it, that Mr. *Goodman* came after my Lord of *Ailesbury* was gone, and now you will prove it that he came not at all.

Sir. B. Shower. My Lord, we do not pretend to falſifie his Evidence for any thing more than is material for the Priſoner; we ſay Mr. *Goodman* was not in the Room where they din'd till thoſe Perſons went away, if in any particular we diſprove him, it is ſufficient for us; if we can ſhew that he was not there till three of thoſe that he has nam'd were gone away, that anſwers our end. We are not concerned if he came at four, five, or ſix a Clock, and diſcours'd with *Chernock* till twelve a Clock at Night.

Mr. Att. Gen. Pray reſerve your Remarks, but only obſerve now what he ſays, that Mr. *Goodman* came not at all thither, and that is more than you pretended to open.

Mr. Conyers. How many were there that were there at dinner?

Crawf. About eight.

Mr. Conyers. How many do you name that you know?

Crawf. My Lord of *Ailesbury*, Sir *John Friend*, Sir *John Fenwick*, Sir *William Parkyns*, and Capt. *Porter*, there were ſeveral others; two or three more, but I did not know their Names.

Mr. Conyers. Did you ſee Mr. *Goodman* come in at any part of the Day afterwards?

Crawf. I do not know that Mr. *Goodman*.

Mr. Cowper. Mr. *Crawford*, you ſay, that for an hour after Dinner you were ſometimes in the Room and ſometimes out; when you were out of the Room, were you always in the Paſſage up to the Room?

Crawf. No, I was not.

Mr. Cowper. Cou'd any Man come in or out without your ſeeing?

Crawf. I ſhould have known him above ſtairs when I came in again.

Mr. Cowper. Why, you ſay, there were two or three above that you did not know.

Crawf. I knew them by Sight, if not their Names.

Mr. Cowper. Were you always in ſight then?

Crawf. No, Sir, I tell you I was up and down.

Sir. B. Shower. Was there any body came in before my Lord of *Ailesbury* went out, that is, any body beſides thoſe that din'd there?

Crawf. No.

Sir B. Shower. My Lord, we are not contending now about a Man's comeing up without his knowledge, but whether any ſuch Man, as Mr. *Goodman*, came up and ſtaid there, during the Conſultation, and we inſiſt upon it; there was no body there, till my Lord of *Ailesbury*, my Lord *Montgomery*, and Mr. *Cook* were gone, but thoſe that din'd there: now I would ask a Queſtion again of him, was there any body but who din'd there, till my Lord of *Ailesbury* went away?

Crawf. No, there was not.

Mr. Att. Gen. Why do you ſay ſo? How do you know that?

Crawf. I did not ſee any body.

Mr. Sol. Gen. Did you attend upon other Rooms, as well as that, at the ſame time?

Crawf. Yes, I did.

Mr. Sol. Gen. Then how is it poſſible that he can ſwear that Mr. *Goodman* was *not* there?

Sir B. Shower. Do you remember when my Lord of *Alesbury* and they went away?

Crawford. It was about Four a Clock.

Sir B. Shower. Were you there in the Room when they went away?

Crawf. I went out with my Lord to the Coach.

Sir B. Shower. Did you ſee him come down Stairs, or did you go up Stairs then?

Crawf. I went up Stairs when the Coach was called.

Sir B. Shower. Was then any body there but ſuch as din'd there?

Crawf. I did not ſee any body there but thoſe that din'd there.

Mr. Cowper. But, my Lord, he does not know all that din'd there neither.

L. C. J. Treby. Mr. *Crawford*, you ſay my Lord of *Ailesbury* and others went away about Four a Clock; pray how long did the reſt of the Company ſtay there?

Crawf. I cannot remember. They ſtay'd there pretty late: it is a pretty while ago.

L. C. J. Treby. About what hour did they part?

Crawf. I cannot remember what time the reſt went away; our Houſe is fuller at Night than at Noon; and I waited upon other Companies. It was pretty late before they went away, that I am ſure.

L. C. J. Treby. But he cannot remember whether it were Five, or Six, or Twelve that they went away, only he can remember the Hour of Four, that my Lord of *Ailesbury* and they went away.

Mr. J. Rokeby. Was it Light, or was it Dark when they went away?

Crawford. It was Dark.

L. C. J. Treby. Did you attend the Company after my Lord of *Aliesbury* was gone?

Crawford. I went up and down into that Company as I did into others.

L. C. J.

L. C. J. Treby. Was you there ſeveral times after my Lord of *Ailesbury* was gone?

Crawf. Yes, I was there once or twice after my Lord of *Ailesbury* was gone, I am ſure.

L. C. J. Treby. And did you never ſee Mr. *Goodman* there?

Crawf. No, I never ſaw Mr. *Goodman* in my Life, before I ſaw him on *Saturday* laſt.

Sir B. Shower. Which is Mr. *Huntley?*

Huntley. Here I am, Sir.

Sir B. Shower. Pray recollect your ſelf, and tell my Lord and the Jury what you remember of any Company that were with Mr. *Porter*, at the *King's-Head*, and who din'd there.

Huntley. My Lord of *Ailesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Parkyns*, Sir *John Friend*, Mr. *Porter* and Mr. *Chernock*.

Sir B. Shower. That was the Company, you ſay, that din'd there: Did Mr. *Goodman* dine there?

Huntley. No, Mr. *Goodman* did not dine there.

Sir B. Shower. Pray, Sir, recollect your ſelf, when did any of this Company part, or go away?

Huntley. My Lord of *Ailesbury*, and my Lord *Montgomery* went away about four a Clock.

Sir B. Shower. Sir, how do you know that?

Huntley. I went down Stairs after them, I was above Stairs when they parted from the reſt of the Company.

Mr. Serj. Darn. Pray mind, Sir, was Mr. *Goodman* there at that Time before they went away?

Huntley. No, he was not.

Sir B. Shower. Are you ſure of that, upon the Oath you have taken?

Huntley. Yes, I take it upon my Oath, he was not there.

Sir B. Shower. Did you attend them at Dinner?

Huntley. Yes, I did attend them at Dinner.

Sir B. Shower. Did you attend them all the while they were there?

Huntley. I was call'd frequently, and was in and out of the Room very much after Dinner.

Sir B. Shower. Do you think if a freſh Man had come in after Dinner, you ſhould not have known him?

Huntley. Yes, I ſhould have known him.

Mr. Att. Gen. Pray, Friend, let me ask you one Queſtion. Was Mr. *Goodman* there at all that Day?

Huntley. That I don't know, I did not ſee him at all.

Mr. Sol. Gen. Did you attend upon any other Rooms that Day?

Huntley. No, I attended only upon that Company.

Mr. Sol. Gen. Were you in the Room all the time?

Huntley. No, I went up and down.

Mr. Sol. Gen. What time did the laſt of the Company go away?

Huntley. It was about Darkiſh, it was pretty Late to the beſt of my remembrance.

Mr. Att. Gen. Pray, did any body come to thoſe Gentlemen after Dinner?

Huntley. No, Sir.

Mr. Att. Gen. did you ever ſee *Goodman* before now?

Huntley. Never in my Life, to my Knowledge.

Mr. J. Rokeby. Did all the Company, but my Lord of *Ailesbury*, and my Lord *Montgomery*, ſtay till it was Duskiſh?

Huntley. That I don't know.

Mr.

Mr. J. Rokeby. Did you know all the Company that was that Day at Dinner?

Huntley. I knew all but one.

Mr. J. Rokeby. And who was that?

Huntley. That was Mr. *Chernock*.

Mr. J. Rokeby. And yet you can't tell whether there was any body elſe that you did not know, how then can you tell that *Goodman* was not there?

Sir B. Shower. He did not know him at that time, but he might remember him afterwards.

Mr. Conyers. Did not the ſame Company uſe to meet at other Times, at your Houſe?

Huntl. Not to my Remembrance.

Mr. Con. How then came you, if they never had us'd to meet there, to know all theſe People's Names?

Huntley, I have ſeen Sir *John Friend* there, and Sir *William Parkyns.*

Mr. Con. Was Sir *John Friend* there, or no?

Huntl. Yes, he was.

Mr. Con. My Lord, he was the only Man that was not nam'd before, you did not name Sir *John Friend* before, as I heard, but pray, did you ever ſee Mr *Chernock* there, but at that time?

Huntley. No, I did not.

Mr. Con. How came you to know it was Mr. *Chernock?*

Huntl. I knew very few of them before that time, and I ask'd their Servants the Names of all thoſe Perſons that were there?

Mr Con. Did you know Mr. *Porter*, pray?

Huntl. Not before that Time, I did ſee Mr. *Porter*, and I knew him again when I ſaw him, his *Black* told me his Name that Day.

Sir B. Shower. You, *Huntley*, I would ask you one Queſtion more, was the Door ſhut, or no?

Huntl. No, it was not.

Sir B. Shower. Did the Servants go up and down as they us'd to do?

Huntl. Yes, Sir.

Mr. Att. Gen. Sir *Bartholomew* would make it that there was no Conſultation at all.

Sir B. Shower. They were very mad Folks if they wou'd conſult at that Rate with the Door open. Pray call Mr. *William Cock*, (who was ſworn).

Mr. Att. Gen. Sir *John Friend* has own'd it, that's dead.

Sir B. Shower. Sir *John Friend's* Confeſſion is nothing to the Priſoner.

Mr. Att. Gen. Mr. Serj. *Darnall* did open, that the Confeſſion of thoſe that dy'd, was an undeniable Proof of the Conſpiracy; but go on with your Evidence.

Mr. Serj. Darn. Pray Mr. *Cock*, will you recollect your ſelf, about the Time when Cap. *Porter*, and ſome other Gentlemen din'd at your Houſe.

W. Cock. Yes, very well.

Mr. Serj. Darn. Pray, Sir, can you tell who din'd there at that time?

W. Cock. There were my Lord of *Ailesbury*, my Lord *Montgomery*, Sir *William Parkyns*, Sir *John Fenwick*, Sir *John Friend*, Mr. *Chernock*, Cap. *Porter* and Mr. *Cook*.

Mr. J. Rokeby. Was that all the Company?

W. Cock. Yes, it was.

Mr. J. Rokeby. One of them ſaid there were Eight.

L. C. J. Treby. and he has nam'd Eight, Brother.

M. Serj. Darn. Can you remember when any of the Company went away, and who went away firſt?

W. Cock.

Cock. My Lord of *Aylesbury* and my Lord *Montgomery* went away in a Hackney Coach; and their Servants were frequently in the Room, and waited afterwards in another Room, after that they had waited at Table at Dinner; and tho' the Door was ſhut, as it uſed to be when any Company is there, yet no body was forbid to come there at all.

Mr. *Att. Gen.* Do you remember when Mr. *Goodman* came there?

Cock. I never ſaw Mr. *Goodman* in my life before to day.

Mr. Serj. *Darnall.* Did any body come to this Company before my Lord of *Aylesbury* went away that did not Dine there?

Cock. I did not ſee any body there at all; and my Lord of *Aylesbury* was about buying a Hogſhead of White-wine, but we could not agree about the Price: And when my Lord of *Aylesbury* went away, I went down with my Lord, and waited upon him to the Coach; and I told my Lord, I hoped he would buy the Wine ſtill. But he anſwered, He could not tell whether he ſhould or no.

Mr. Serj. *Darnall.* Who elſe went with my Lord of *Aylesbury?*

Cock. My Lord *Montgomery.* I don't remember any body elſe.

Mr. *J. Rokeby.* Did all the reſt of the Company go away at once?

Cock. Truly, my Lord, I can't ſay they did.

Mr. *J. Rokeby.* By what time did the reſt go away?

Cock. I believe it might be Eight or Nine a Clock.

Mr. Serj. *Darnall.* You ſaw my Lord of *Aylesbury* when he parted: Was Mr. *Goodman* there then?

Cock. I did not ſee him.

Mr. B. *Powis.* Did Mr. *Cook* ſtay till the laſt?

Cock. That I can't tell truly.

Mr. B. *Powis.* I find they all Swear to Four a Clock of my Lord *Aylesbury's* going, and go no further.

Mr. *Att. Gen.* Pray, Sir, let me ask you a Queſtion or two: Did you ever ſee Mr. *Goodman* before now?

Cock. No, I do not remember I did.

Mr. *Att. Gen.* When you went into the Room after Dinner, did you look about the Room to ſee whether there were any new Company?

Cock. I did look about the Room ſeveral times, and ſo did my Servants, to ſee if there were any thing wanting.

Mr. *Att. Gen.* Can you take it upon your Oath, that he was not there whilſt my Lord of *Aylesbury* ſtaid?

Cock. I do, and can take it upon my Oath, he was not.

Mr. *Att. Gen.* Then if you can, pray diſtinguiſh the time when he came in.

Cock. I do not remember that ever I ſaw him in my Life before to day.

Mr. *Att. Gen.* Why are you not as poſitive that he was not there at all, as that he was not there before my Lord of *Aylesbury* went away?

Cock. He might come in, and I not ſee him.

Mr. *Att. Gen.* Might he not as well come in before they went away, as after to come in and you not ſee him?

Cock. No, I do not think he cou'd.

Mr. *Att. Gen.* Why do you think ſo?

Cock. Becauſe the Servants were all about, and they did not go to Dinner till two a Clock; and I believe thoſe Gentlemen that I named came in a quarter of an Hour's time to Dinner.

Mr. *Att. Gen.* We do not ſay he came there before Dinner; but cou'd he not come in after Dinner, before my Lord of *Aylesbury* and my Lord *Montgomery* went away, without your ſeeing him?

Cock. Yes, Sir.

Sir *B. Shower.* Then hark ye, Sir, I wou'd ask you one Queſtion, Did you ſee him, upon your Oath, or not?

Cock. No, I did not.

Sir *B. Shower.* Might not Mr. *Goodman* come in to them without your ſeeing him?

Cock. It is poſſible, but I don't think it was ſo.

Mr. *J. Rokeby.* How then can you be poſitive that he was not there till my Lord of *Aylesbury* went?

Mr. *Sol. Gen.* You ſay you may be poſitive he was not there before my Lord of *Aylesbury* went: Can you be as poſitive now, that he was not there before Mr. *Cook* went?

Cock. I do not know when Mr. *Cook* went.

Mr. *Sol. Gen.* How can you be then poſitive he was not there before my Lord of *Aylesbury* went?

Cock. There were no more than what Dined there when my Lord of *Aylesbury* went away.

Mr. *Comyers.* Pray, Sir, let me ask you a Queſtion: Were you in the Room at any time after Dinner? *Cock.* Yes, I was, Sir.

Mr. *Comyers.* Pray, Sir, how many times after Dinner were you there?

Cock. I believe half a dozen times.

Mr. *Sol. Gen.* And yet you do confeſs that Mr. *Goodman* might come in after Dinner before my Lord of *Aylesbury* went, and you not ſee him?

Sir *B. Shower.* Ay, but he could not ſtay there without his ſeeing him, if he was ſo often in the Room; you don't take Mr. *Cock*'s Evidence right.

Mr. *Att. Gen.* You named Eight Perſons that Dined at your Houſe; Did you know them all perſonally before that day?

Cock. Yes, my Lord, the moſt of them at leaſt.

Mr. *Att. Gen.* Did they uſe to meet at your Houſe?

Cock. Commonly Sir *John Friend* did once a Week. Mr. *Chernock* I knew when I was a Drawer, and ſo I did Sir *William Parkyns*: The reſt I knew by hearing their Names.

Mr. *Att. Gen.* Did you know them before that Day Sir, I ask you?

Cock. I had ſeen Captain *Porter* ſeveral times before that Day, but I cannot ſay at my own Houſe.

Sir *B. Shower.* Do you remember the Treaty about the Hogſhead of White-wine? *Cock.* Yes, Sir, very well.

Sir *B. Shower.* Were you by when my Lord of *Aylesbury* went away, and ſpoke with him about it?

Cock. Yes, I was; and told him, I hoped he would buy the Wine ſtill.

Sir *B. Shower.* Can you be poſitive that any body was there before my Lord of *Aylesbury* went away, that cou'd ſtay there any time, and did not Dine there?

Cock. I believe not, Sir; for I came in half a dozen times after Dinner, and I believe if I had heard Mr. *Goodman*'s Name, or ſeen him there, I ſhou'd have remembred it; but I did not ſee any body but thoſe that Dined there.

Mr. *Cowper.* Where was you when my Lord of *Aylesbury* went away? Where did you meet him going away?

Cock. Upon the Stairs; ſeeing my Lord of *Aylesbury* and my Lord *Montgomery* coming down, I met them.

Mr. *Cowper.* Where did you meet them? At the middle, or the top of the Stairs?

Cock. My Lord of *Aylesbury* was at the top of the Stairs.

Mr. *Cowper.* Did you meet him juſt coming out of the Room?

Cock. Yes, Sir, I ſaw the Coach that was called for my Lord; and ſo I went up Stairs, and met my Lord at the top of the Stairs coming down.

Mr. *Sol. Gen.* Now how can you be poſitive who was in the Room when he came out of the Room?

Cock. I went up into the Room after my Lord of *Aylesbury* went away.

Mr. *Sol. Gen.*

Mr. *Sol. Gen.* How long after my Lord of *Aylesbury* went away?

Cook. It was preſently after.

Mr. *Sol. Gen.* How long before my Lord of *Aylesbury* went away, had you been in the Room?

Cook. I had been there juſt before.

Mr. Serj. *Darnall.* Call *Thomas Peachy.* (*Who appeared, and was Sworn.*)

Sir *B. Shower.* My Lord, we ſhall prove that after the Plot broke out, and after Mr. *Porter* had made his Diſcovery, there was no diſturbance of Mr. *Cook* 'till a good while after *Chernock*'s Trial; and Mr. *Cook* was ſo far from being ſenſible, or conſcious of any guilt, that he never abſconded, but continued for three weeks in his Father's Houſe, where he was taken by a Meſſenger. Pray Mr. *Peachy* will you tell my Lord, and the Jury, where Mr. *Cook* was taken, and when, and by whom?

Peachy. He was taken at his Father's Houſe by a Meſſenger, about ſeven a Clock in the morning.

Sir *B. Shower.* What day of the Week was it he was taken?

Peachy. Upon a *Sunday* morning, in his own Room, in his Father's Houſe, at ſeven a Clock in the morning.

Sir *B. Shower.* Did People come to him as they uſed to do?

Peachy. Yes, and he went frequently abroad as he uſed to do, and did never abſcond from his Father's Houſe.

Mr. Serj. *Darnall.* Pray Swear Mr. *Treganna.* (*Which was done.*)

Sir *B. Shower.* Mr. *Treganna*, pray do you remember how long after the Plot broke out did you ſee *Mr. Cook?*

Treganna. After *Mr. Chernock*'s Trial a Week he was at my Chamber, after the Plot broke out, he was concerned in a Trial at *Wincheſter* Aſſizes, upon an Iſſue out of Chancery, Mr. *Nicholls* was the Clerk in Court, and went down to manage it at the Aſſizes; and Mr. *Cook* came to me a day or two after *Wincheſter* Aſſizes was over, and ask'd me if I had any news from the Aſſizes? This was long after the Plot broke out, and I remember particularly that I ſaw him twice after the Plot was diſcovered, at my Chamber.

Sir *B. Shower.* Swear Mr. *Nicholls.* (*Which was done.*)
Sir, pray will you tell my Lord and the Jury what you know of Mr. *Cook*'s appearing abroad after the Plot was diſcovered?

Mr. Nicholls. I was ſent down to the Trial, I was preſent and did attend at two Trials indeed, and I ſuppoſe Mr. Baron *Powis* may remember that I attended at two Trials at *Wincheſter* Aſſizes.

Mr. B. Powis. Poſſibly you might, Sir; I can't tell all the Attendance at the Aſſizes.

Mr. Nicholls. And after my return from *Wincheſter* Aſſizes, *Mr. Cook* was with me ſeveral days, both at my Office, and Chamber, and at his Father's Office; and I remember particularly that he threatned me that I was in trouble when I was at *Wincheſter*, and therefore I remember it very well.

Sir. *B. Shower.* Mr. *Nicholls*, you know Mr. *Cook* very well, pray what are his Morals?

Mr. Nicholls. Upon occaſion of the Cauſe in Chancery that went to Trial, I have had the knowledge of *Mr. Cook* five or ſix years, I always believed him to be as temperate a man as ever I met with. I think in five years time I was not above once with him in a Tavern.

Sir *B. Shower.* Did you ever hear him Swear?

Mr. Nicholls. No, never, nor vent a Curſe; I believe he drank as little as any man, and was as godly a man; I never heard him ſpeak a foul word.

Sir *B. Shower.* How do you know that, Sir, that he was ſo godly a man?

Mr. Nicholls. Upon occaſion of this Cauſe I was ſeveral times at Sir *Miles Cook*'s, and at *Mr. Cook*'s Lodgings there, and we were to go about Buſineſs, and after he was dreſt, he has made me ſtay while he went into his Cloſet and

ſaid

ſaid his Prayers. And he told me further, that he never went out of his Father's doors without ſaying his Prayers; and I was forc'd to ſtay at the door while he perform'd his Devotions, as he told me, and I believe he did.

Mr. Serj. *Darnall.* Now, my Lord, we will call ſome other Witneſſes to prove his good affection to his Country, how he continually deſired ſucceſs to the Fleet, and to the Army.

Sir *B. Shower.* So that really he had an averſion to it.

Swear Mr. *Hamond.* (*Which was done.*)

Mr. Serj. *Darnall.* Pray, Sir, will you give an account what you know of the Priſoner, concerning his Judgment, and concerning his Morals?

Hamond. I have been for ſome time acquainted with Mr. *Cook* the Priſoner at the Bar, and to the beſt of my obſervation, I always took him to be a Conſcientious Man, and I have heard him declare great deteſtation of a *French* Force; and three or four days before he was taken into Cuſtody, I ask'd him what he heard of Intelligence? he ſaid he heard what was in the publick Prints, and heard no more, and knew no more; and he had a great abhorrence of the Conſpiracy, and thought it a very monſtrous thing; I never heard him ſpeak a diſreſpectful word of the King's Perſon or Government in my life: And I ſay again, I have heard him ſeveral times declare in common Converſation, that he had an averſion to a *French* Power, and he had a dread of it.

Mr. Serj. *Darnall.* What have you heard him ſay about our Fleet, or Army?

Hamond. My Lord, I have heard him very much wiſh Proſperity and Succeſs to our Fleet. Mr. J. *Rokeby.* What Fleet, pray Sir?

Hamond. To our Fleet, King *William*'s Fleet againſt the *French*; things to this purpoſe he has frequently ſaid.

Mr. Serj. *Darnall.* Then Swear Mrs. *Hunt.* (*Which was done*) but ſhe was not Examined.

Sir *B. Shower.* My Lord, we leave it here; but I muſt beg the favour, that if they give any new Evidence, and there be occaſion, we may have liberty to anſwer it. And I have an Obſervation or two to make when the Evidence is over.

Mr. *Att. Gen.* My Lord, if they have done with their Evidence, I beg leave to obſerve that there is ſomething ariſes upon that Evidence, that will give us occaſion to call a Witneſs or two more. My Lord, the firſt Witneſs which they call was *Edwards*, and he is in Cuſtody upon ſuſpicion of High Treaſon in *Newgate*, and he gives an account of ſome diſcourſe that he had with Mr. *Goodman*; and for that it will be neceſſary for us to call *Mr. Porter* again, and *Mr. Delarue*, to ſhew that this *Edwards* the Witneſs, as he is Committed for ſuſpicion of High Treaſon, ſo he was in the Conſpiracy for the Aſſaſſination; he was one in the Liſt that was brought back by *Cranburne* from *Mr. Chernock* to Captain *Porter*, as one of *Chernock*'s Men, and he is in Cuſtody for it. Then as to the other matter, they have called three Witneſſes to prove that *Mr. Goodman* was not in this place at this time. The Councel indeed opened it that he was not at the Tavern 'till after my Lord of *Aylesbury* and my Lord *Montgomery* were gone away, but their Evidence goes further, that he was not there at all; and the Maſter of the Houſe ſays, he was not there to his knowledge at any time. So that if their Evidence prove any thing, they prove that he was not there at all, they do not remember that they ſaw him there; ſo that the Queſtion will be, whether *Mr. Goodman* was there at that time, and it will be neceſſary to call *Mr. Goodman* again, and *Mr. Porter*, to confront theſe Witneſſes, who will tell you when he came in; and particularly as to my Lord of *Aylesbury*, that he went with him to the Stairs-head, and my Lord would not let him go further, but he went back again when my Lord of *Aylesbury* went down ſtairs. We will begin with the Witneſſes, as to this *Edwards*.

Swear *Mr. Delarue.* (*Which was done.*)

Mr. Conyers. Mr. Delarue, pray do you know *Mr. Edwards* that was here?

Mr. Delarue.

Mr. Delarue. He goes by ſeveral Names, I know him by the Name of *Douglas*; and laſt *Monday* I came into the *Preſs-Yard*, and ſaluted him by the Name of *Douglas*, and he ſaid he had taken his own Name again, by which he was known at St. *Germains*, and that was *Edwards* or *Richards*, as I remember, or ſome ſuch Name.

Mr. *Conyers.* When was he at St. *Germains*?

Mr. *Delarue.* About three or four years ago.

Mr. *Conyers.* Pray look upon him, ſee if you know him.

Mr. *Delarue.* I know him very well, there he ſtands, that is the Perſon in the black Wig; he was reputed at St. *Germains* to be my late Lord *Dundee*'s Chaplain.

Mr. *Att. Gen.* What Name did he go by at St. *Germains*.

Mr. *Delarue.* I can't very well tell; but he ſaid he had taken his own Name again; and I think he ſaid it was *Edwards*, or *Richards*.

Mr. *Conyers.* Did he go formerly by the Name of *Douglas*?

Mr. *Delarue.* Yes, here in *England*; Mr. *Porter* knew him to go by that Name. Mr. *Att. Gen.* What elſe do you know of him?

Mr. *Delarue.* The Liſt that Mr. *Cranburn* carried from Mr. *Porter* to Mr. *Chernock*, and which he brought back again from Mr. *Chernock* to Mr. *Porter*, had in it among the other Names the Name of *Douglas*, which I underſtood to be that Gentleman.

Mr. *Att. Gen.* Did he go by that Name at that time?

Mr. *Delarue.* Yes he did.

L. C. J. *Treby.* Pray repeat that again, Sir, that we may underſtand it, and ſee whether it be Evidence.

Mr. *Delarue.* Why, Sir, the Liſt that Mr. *Cranburn* brought from Mr. *Chernock* to Mr. *Porter*, at the Foot of the Liſt which Mr. *Porter* had ſent to him, there were other Names written, as I believe, in Mr. *Chernock*'s Hand; and among thoſe Names there was the Name of *Douglas*, which I underſtood to be this *Mr. Edwards*, as he calls himſelf. And moreover, when *Mr. Porter* went out of Town, going to Doctor's Commons, I called at *Mr. Chernock*'s, and he had a great deal of Company with him, 4 or 5 Troopers, and among the reſt this *Edwards* or *Douglas* was there ſitting by him. Here is a Gentleman that I ſee upon the Bench, I think he is a Scotch-man, that knew him at St. *Germains* as well as I. I think his Name is *Mack Donnel*.

Mr. J. *Rokeby.* What Country-man did you take this *Edwards* to be?

Mr. Delarue. A Scotch-man, and Chaplain to my Lord *Dundee* that was killed in *Scotland*.

Mr. Serj. Darnall. Did you ſee this Gentleman in *France*, Sir?

Mackdonnel. I never was in *France* in my Life.

Mr. Att. Gen. You can't ask him the Queſtion; you know it tends to make him either accuſe or excuſe himſelf of a Crime. Pray call *Mr. Porter* again. But in the mean time, till he comes, we'll examine *Mr. Goodman*, becauſe he is here. *Mr. Goodman*, you were by, and heard what theſe Drawers ſaid concerning your being at the *Old King's-Head* in *Leadenhall-ſtreet* that day. Pray give an Account when you came in, whether you ſaw my Lord of *Aylesbury*, and what paſſed between you at my Lord of *Aylesbury*'s going away?

Mr. Goodman. Mr. Porter brought me up; and when I came in they were all ſitting; and after Salutation I ſat down: And when they had conſulted ſome time, they came to a Reſolution, as I have told you already. The Fellows are ſo far in the right of it, that my Lord of *Aylesbury* and my Lord *Montgomery* went away firſt; for I took my leave of them at the Head of the Stairs. Says my Lord of *Aylesbury* to me, Pray avoid Ceremony, we will go away privately as we came, in a Hackney Coach. And as to the Maſter of the Houſe, who ſays, he does not know me, I have Dined ſeveral times there, four or five times with Sir *John Friend*; and one particular Day above all the reſt, I remember I was

not well, and I went down Stairs to the Bar, and ſaid, I pray can you get me a little Brandy. He ſaid, Yes, he would help me to ſome of the beſt in *England*. And he brought me up ſome which I liked very well: And thinking he had a Quantity of it, I askt him what I ſhou'd give him a Gallon for a Parcel. But he ſaid, He had but a little; and I am ſure he has ſeen me there five or ſix times.

Mr. Att. Gen. Then ſet up that *Maſter* of the Houſe *Cock* again. (*Which was done*) Come, Sir, you hear what *Mr. Goodman* has ſworn, and mind it, you are upon your Oath. You ſaid juſt now, that you never ſaw *Mr. Goodman* before.

Cock. No, upon my Word, Sir; I don't know that ever I ſaw him before.

Mr. Att. Gen. Do you remember nothing of his being with Sir *John Friend* at your Houſe?

Cock. No, upon my Word, Sir.

Mr. Att. Gen. Nay, you are upon your Oath. Nor do you know nothing of your giving of him Brandy?

Cock. No, upon my Oath, I do not remember any ſuch thing.

Mr. Att. Gen. That is a very ſafe way of ſwearing, I profeſs.

Mr. Conyers. He remembers the particular time when he was ſick, and you offer'd to ſell him ſome Brandy.

Mr. Att. Gen. No, he askt him what he ſhould give him for it a Gallon. But, Mr. *Cock*, did you ever ſee *Goodman* in your Houſe ſince my Lord of *Aylesbury* and they were there?

Cock. No, upon my Word, Sir, I did not; and I never had but two Gallons of Brandy in my Life at a time; and I never had any Cask, or any thing of that nature, to ſell any out of.

Mr. Att. Gen. Who uſed to be with Sir *John Friend* at your Houſe?

Cock. There uſed to be Mr. *Richardſon*, and Juſtice *Caſh*, and Col. *Caſh*.

Mr. Goodman. *Mr. Richardſon* was there that day: I could almoſt have remembred the particular day, but I cannot be poſitive; only we were in the ſame Room where the Conſultation was, at the further part of the Room.

Mr. J. Rokeby. You Friend, the Maſter of the Houſe, you hear what *Mr. Goodman* ſays: He ſays he was with Sir *John Friend* at your Houſe, and being not well, he askt for ſome Brandy, and you told him, You'd give him ſome of the beſt in *England*. And he propounded to you then to ſell him ſome of it; but it ſeems there was no Bargain made. Do you remember any ſuch thing of one that was with Sir *John Friend*, that ſpoke of buying of Brandy when he was ſick?

Cock. No, upon my Word I do not.

Mr. Att. Gen. Then ſet up *Mr. Porter*. (*who ſtood up.*) Pray *Mr. Porter*, look upon that man in the black Perriwig; what Name did he uſe to go by?

Mr. Porter. He uſed to go by the Name of *Edwards*.

Mr. Att. Gen. Had he any other Name?

Mr. Porter. Yes, *Douglas*.

Mr. Att. Gen. He has ſo many Names, that we don't know which his is true Name. *Mr. Porter*, pray what elſe do you know of him touching his being concerned in the Conſpiracy?

Mr. Porter. I know not any thing of my own Knowledge; but his Name was put down in the Liſt that Mr. *Chernock* ſent me of his men, and Mr. *Delarue* read his Name there.

Mr. Sol. Gen. *Mr. Porter*, you were a Witneſs upon the Trials of Sir *John Friend* and Sir *William Parkyns*; did you give Evidence that Mr. *Goodman* was in the Room at the ſame time when the Conſultation was?

Mr. Porter. Yes, Sir.

Mr. Att. Gen. Well, you hear that theſe People have ſworn, that *Mr. Goodman* did not come till my Lord of *Aylesbury* went away; nay indeed, that he was not there at all.

Mr. Porter.

Mr. Porter. My Lord, upon my Oath he was there before my Lord *Aylesbury* went away, and *Mr. Goodman* bowed, and took leave of my Lord as he went out of doors.

Mr. *Att. Gen.* What time did my Lord of *Aylesbury* go away?

Mr. Porter. It was about an hour and a half, or two hours after Dinner, and he was in the Room when my Lord went away, for he took his leave of him at the door.

Mr. Cowper. Do you remember the manner of *Mr. Goodman*'s coming in?

Mr. Porter. Mr. *Goodman* ſent up his Name to me, and I told the Company, and promis'd for him, that he was a very honeſt Man, and much in King *James*'s Intereſt; and then with their conſent I went down and brought him up.

Mr. J. Powell. How long time do you think there was between *Mr. Goodman*'s coming in, and my Lord of *Aylesbury*'s going away?

Mr. Porter. I cannot tell that, I do not remember exactly how long it was.

Mr. J. Powell. Was it a quarter of an hour, or half an hour?

Mr. Porter. A great deal longer, for we had diſcourſed of the whole buſineſs after *Mr. Goodman* came into the Room.

Mr. Conyers. How long were they there after *Mr. Goodman* came in?

Mr. Porter. It was very near two hours after he came in, before they went away; they did not go away 'till ſix a Clock, and he came in at four, as near as I can remember.

Mr. Att. Gen. Then, my Lord, we have done.

Sir *B. Shower.* Then I beg the favour of a word or two, my Lord. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Caſe for the Priſoner at the Bar, and I muſt beg your Lordſhip's patience, and your favour, Gentlemen, to make a few Obſervations upon the Evidence that has been given; for we humbly inſiſt upon it in point of Law, that here is not ſufficient Evidence before you to Convict the Priſoner. You are, Gentlemen, to have reſpect and regard to your Conſciences and the Oaths which you have now taken, to give a Verdict, and make true Deliverance between the King, and the Priſoner; you are not to go according to your own private Opinions, nor according to publick Fame, nor according to common Report, nor according to the Verdicts in other Caſes, nor according to the Confeſſions or Dying Speeches of Criminals who have been Executed, *whether made by themſelves, or by others for them*; but you are to go by the Teſtimony of Credible Witneſſes, and if you have not the Evidence of two Credible Witneſſes before you, my Lords the Judges will inform you how the Law ſtands. That by the Statute of *Edward* the Sixth, and the New Statute for Trials of Treaſons, there muſt be two Witneſſes to prove the Priſoner guilty of the Overt Act of the Treaſon that is laid in the Indictment; and whether there have been two Credible Witneſſes produced before you, is the Queſtion that you are to conſider upon your Oath and Conſcience; that is, whether you are ſatisfied here be two ſuch as the Law requires. The Queſtion is not meerly whether Mr. *Cook* be Guilty, but whether in your Conſciences he be *legally* prov'd Guilty; whether there be Evidence to ſatisfie your Conſciences, according to the Laws of the Land, that he is Guilty; and we inſiſt there is not; and therefore I beg leave to recapitulate what has been Sworn againſt him, that we may ſee how far it reaches, and wherein it is defective.

Gentlemen,

Gentlemen, Mr. *Porter* he Swears that about the beginning or middle of *May*, he cannot tell which, there was this Meeting at the *Old King's-Head Tavern* in *Leaden-Hall-Street*; in which, I wou'd obſerve to you, that he confines himſelf to a certain Month; the Reaſon is very plain, and therefore I ask'd him whether it was not in *April*; for if he had ſaid it had been then, there had been no danger to the Priſoner, becauſe of the Act of Indempnity, therefore he was careful to fix it in *May*; and he wou'd not lay it in *June*, for the Tenth of *June* is a Famous Day; and then, or ſoon after, *Newgate* had him; he was Confined there for a Riot on that Day, and ſo they have reſtrained it to a Month, and the only Month that he is capable of Swearing to, as to any Act done the laſt year 'till they came in *January* to the Aſſaſſination Plot, which the Priſoner is not accuſed to have had any Concern in; but it ſhou'd ſeem he cannot tell what Day of the Week, or of the Month, but about the beginning or the middle of *May* eight Perſons Dined at this place, and then after Dinner *Mr. Goodman* came in, and they diſcours'd about this matter.

Firſt, Gentlemen, we inſiſt upon it, that it is very improbable that Engliſh Proteſtants of pious Converſation and good Morals, ſhou'd agree, as he ſays, to ſend ſuch a Meſſage to the late King, to Invite over a *French* Popiſh Force; we may eaſily ſee the horrid and miſchievous Conſequences that wou'd have followed ſuch a practice, ſuch as muſt affect every Engliſh-man with a Concern, ſo that it is improbable a Man of Vertue and Piety cou'd engage in ſuch an Enterprize; and if it be improbable, you will never believe it, unleſs the Conviction or Proof be irreſiſtable: And if you have any other Reaſons to diſtruſt this Man's Truth, then we hope you will go upon the ſide of probability; and not let Popular Prejudice, Common Fame, or any thing elſe but Legal and Undeniable Evidence have the Aſcendant over you. If you are not ſatisfied that *Mr. Cook* did aſſent (as from the Character of the Man it is not probable he ſhou'd) to ſend *Chernock* into *France*, to perſwade King *Lewis* and King *James* to ſend Ten Thouſand Men to Invade our Country, then he is not Guilty.

In the next place, Gentlemen, he is not Guilty we ſay in the Eye of the Law, if they have not two Witneſſes; and for that we ſay you have but one, or but one that is to be believed; and if you have but one that is to be believed, that in Law is but one, and conſequently my Client is not Guilty; ſo the King's Councel agree, that if there be but one Witneſs, he cannot be Convicted, the Law is plain in the Caſe. Now to make it out that here is but one Witneſs at moſt, we have offered you ſeveral Objections, and made them out by Evidence, againſt the Teſtimony of *Mr. Goodman*; that he is not a Perſon fit to be believed; and if he be out of the Caſe, then does *Mr. Porter*'s ſtand alone, and all will amount but to one Witneſs, ſuppoſe it ſhou'd be granted that his Teſtimony were true.

Firſt, We have read a Record of Conviction againſt him, of a Crime, one of the greateſt next unto Treaſon, that is known in our or any other Law. That he hired a Man to Poiſon two Dukes, Branches of a Noble Family, to which he had ſuch great Obligations, as all Mankind do know, and he himſelf cannot but acknowledge; and if there were not that aggravation in it, of his Obligations to that Family, yet to lie

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in wait to Murder and Poyſon, is ſuch an Offence as any Age can ſeldom ſhow the like. And the Objection is not ſo very eaſily anſwer'd as they would have it; nor can it be ſo ſoon paſſed over as they think, by ſaying He is a Witneſs of a Confederacy with which the Priſoner is accus'd, a Crime greater than the thing objected. It is true, none can bear Teſtimony in ſuch a buſineſs, but he that is a Party: But, we ſay, if theſe Perſons, who come and ſet up themſelves for Witneſſes, were not *probi Homines*, and did not appear to be perſons of indifferent Credit between Man and Man, and did not ſtand impartial in the Eye of the World in other reſpects before, then they are not to be believ'd, as to what they charge themſelves and others to be guilty of. Now, if Mr. *Goodman* ſtand convicted of ſuch an Offence as this that is alledg'd againſt him, tho' he is pardon'd by the Act of Parliament, or Satisfaction acknowledg'd upon the Record, tho' it be even the very next Term, yet that does not purge him from the Infamy and Diſgrace, or from the Imputation of being concern'd in ſo Villanous a Deſign. It is impoſſible that he ſhould be a good Witneſs that wou'd be engag'd in ſuch a matter; eſpecially when we have thoſe Various Witneſſes, and ſuch a Concurring Teſtimony, that what he has Sworn is abſolutely Falſe.

Gentlemen, if there were nothing but his own Teſtimony in the Caſe, there could be no Queſtion at all in it: And as to Captain *Porter*'s Teſtimony about his being there, we have produc'd three Witneſſes, who, if they be of Credit, then Mr. *Goodman* is not to be believ'd, but is falſified throughout; for, it is not the Queſtion, Whether Mr. *Cook* went away before the Conſultation and the Reſolution; for, if my Lord of *Ailesbury*, or my Lord *Montgomery* went away, Mr. *Goodman* is falſify'd in that, and conſequently you ought not to believe him in the reſt; for he actually Swears, that my Lord of *Ailesbury*, my Lord *Montgomery*, and thoſe other Gentlemen, were all preſent, and at the Conſult, and did conſent and agree to the Reſolution, by uſing theſe words; *Yes, you may*; *Yes, you may*. Now, we ſay, there are three Witneſſes that ſwear, That my Lord of *Ailesbury* was gone before he came there. I do not care whether he came there, or not; that is not material: If there were no body there when my Lord of *Ailesbury* was there but thoſe that were at Dinner, for then Mr. *Goodman* was not there at any ſuch Conſultation, as they would inſinuate was at that Time, in that Place, and that Company.

My Lord, we have prov'd to you Mr. *Cook*'s Abhorrence and Declaration, which, we think, ought to go a great way in ſatisfaction of his Innocence, at leaſt to induce you to the favourable Side; for, Gentlemen, you are not brought hither to Convict a Man only, but to Try and Examine him; and it is your Duty to Acquit, as well as Convict, according as the Evidence ſtands: It is your Duty to go according to your Conſciences, and to declare whether he be Guilty, or Not Guilty, upon the Evidence you have before you: You are to Examine the Truth of the Fact in all its Circumſtances, and upon your own Conſciences to declare, whether he is Guilty or Not Guilty; now we propoſe it to you, and ſubmit it to your Conſciences, That here are Three Witneſſes, that ſpeak upon their Oaths, againſt whom there is no Objection, That ever they were Guilty of lying in wait to Poyſon any body, nor in any Plot for an Aſſaſſination, nor any Conſpiracy for inviting an Invaſion from *France*, nor any other Objection againſt them, but they ſtand upright in the Face of the World, and they Three ſwear, That he was not there at that time. The Anſwer that we expect, is, That he might be there, and they not ſee him: And becauſe it was poſſible he might be there, and they not ſee him, therefore it is no Evidence: But, My Lord, becauſe *it may be ſo*, is no Evidence that *it is ſo*; that's no Objection, for you

will take it as the nature of the thing will afford, and the Matter itſelf allow. Now there can be no better Evidence than this; That they went in and out continually; the Drawers, and the Maſter of the Houſe five or ſix times himſelf, were in the Room, and they ſay, There was no ſuch Perſon there. Why then it is very Improbable, if not Impoſſible, that any ſuch Man ſhould be there. The one ſwears, He came down from my Lord of *Ailesbury* juſt before he went away; and another ſays, He follow'd him out of the Room; and the Maſter ſays, That he met my Lord of *Ailesbury* at the Stairs-head. All which falſifies Mr. *Goodman* in that Particular, That he was with my Lord of *Ailesbury* at the Stairs-head, when he went away. Theſe are incompatible; and if we falſifie him in any one thing, he is not to be believ'd in any other.

Then, Gentlemen, we offer to your Conſideration an Anſwer to another Objection: They ſay, theſe Witneſſes ſeem to ſwear, That he was not there at all. We are not concern'd whether he was there afterwards, or not: If you are ſatisfied, that he was not there, as our Witneſſes ſwear, while my Lord of *Ailesbury* was there, that's enough. But then they make an Objection, How comes the Maſter of the Houſe to remember my Lord of *Ailesbury*'s going away, more than any body elſe? Gentlemen, you know the nature of the thing ſhows, that not only that it was more probable the Maſter of the Houſe ſhould make his Obſervations near the time of Dinner, rather than afterwards at Night, when there is more Hurry: But it is more probable he ſhould take notice of it from the Quality of the Perſon, from the Diſcourſe he had with him about the Whitewine, which was a good *Medium* to refreſh a Vintner's Memory, it being a matter in his own Trade, and that might make him call it to mind.

Therefore, Gentlemen, we think theſe three Witneſſes ſtand free and clear in their Credit; and being ſo, are inconſiſtent with Mr. *Goodman*'s Teſtimony; and, we hope, in favour of Life, the Credit inclines on their ſide, eſpecially when the Queſtion is, Whether a Man ſhall be executed for *Treaſon* who never fled for it, who was never charg'd with any *Treaſon* or *Treaſonable Practiſes* before; nay, not ſo much as with any particular *Crime* or *Immorality*: And, whether Three Witneſſes ſhall be believ'd, againſt whom there is no Objection, rather than Two, againſt One of which there are ſuch Objections.

My Lord, we are not now debating or attacking the Evidence of the *Plot*, or arraigning the former Judgments againſt the *Conſpirators* that have ſuffer'd; but, Gentlemen, we are putting you now upon a ſerious Enquiry, (as GOD and your own Conſciences ſhall incline you) whether our Clyent be Guilty or Not Guilty upon this Evidence; that is, whether Mr. *Goodman* ſwears true, or not. We hope that we have given you ſufficient Satisfaction, that upon Mr. *Goodman*'s part the Evidence is inſufficient; and we hope you will accordingly find our Clyent Not Guilty.

Mr. *Att. Gen.* If Mr. *Cook* have any thing to ſay himſelf, I deſire he may ſay it now, before we begin.

Sir *B. Shower.* No, pray go on, Sir.

L. C. J. *Treby.* Mr. *Cook*, wou'd you ſay any thing yourſelf, before the King's Council ſum up?

Cook. The little I have to ſay, my Lord, I'll ſpeak now, or by and by, which you pleaſe.

L. C. J. *Treby.* You muſt do it now, becauſe after they have ſumm'd up, there is nothing more to be ſaid by you.

Cook. My Lord, I thank God, I have liv'd a Life, I hope, as good as any Man, and have often receiv'd the Bleſſed Sacrament; I have done it conſtantly, and ſhall do it ſpeedily, by the Grace of God, as ſoon as I can have

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a Miniſter come to adminiſter it to me. I did offer it to my own Father, when he came to me, and told me, *If I would confeſs this thing I ſhould not come to Tryal:* I told my Father, I would not for Ten thouſand Worlds take away the Blood of an Innocent man to ſave mine. I thank God, I am in a very good way to dye; I have, for at leaſt this laſt Year, frequently received the Bleſſed Sacrament; and how I have liv'd, every body in the Court that knows me can tell my Life and Converſation has been as regular as any man's, and I am as ready to dye to morrow, if occaſion was for it (I thank God) as any one; I will receive the Bleſſed Sacrament upon it; and it is not for Life that I would do any thing that is wrong or unjuſt: I do love my Nation, and I love the Quiet of the Nation; I never was for diſturbing the Government that now is; and I ever was againſt Foreign Forces or an Invaſion, for I never thought of one, or heard of it, but with Abhorrence and Deteſtation: And I do aſſure faithfully, I ſhou'd be ſorry to diſparage Mr. *Porter*'s Evidence, becauſe I would have every body that was concern'd in that Horrid and Barbarous Crime to ſuffer; in God's Name, let them all ſuffer. I thank God, I never knew any thing of it, nor of a *French Invaſion:* And I would ſay more of it, but that I would not hurt Mr. *Porter*'s Evidence, whoſe Diſcovery of that Bloody Buſineſs has done ſo much Service. As for Mr. *Goodman*, as I hope to receive the Bleſſed Sacrament, and may I periſh when I do it, if I ſpeak an Untruth; I would not for any thing, no, not for the Good of my Country, have Innocent Blood ſpilt; I would lay down my Life to ſerve my Country, but I would not have my Blood be lightly loſt; and how little a Man ſoever I am, my Blood will lye as heavy upon the Nation as any the weightieſt man's can do. I do not doubt your Lordſhip's Juſtice, nor the Jury's, but I pray, my Lord, obſerve; tho' it is uſual not to own things at the Bar, yet I do not make this Denial as of Courſe, but out of Truth; and I aſſure you, in the preſence of the whole Court, if I ſhould ſuffer for this, I muſt at my laſt moments either confeſs or deny ſomething: And, I ſay, I do aſſure, in the preſence of the whole Court, and I will take the Bleſſed Sacrament upon it, that I muſt, at my Death, deny this whole matter, and that ever I did ſee Mr. *Goodman* at all there; I do not think I ſaw him; I do not remember I ſaw Mr. *Goodman* at all, except once in *Germain-ſtreet*, when the Coach broke, and that muſt be but in paſſing by neither, and he would have hurt or kill'd the Coachman, and we kept him from it; and I walk'd with him half the length of *Germain-ſtreet*, before I knew who Mr. *Goodman* was. If ever a one of thoſe Gentlemen, that are Men of Credit and Honour, can ſay I was any ways ſo inclined, or that they ever ſaw me, or knew me, that I ever bought a Piſtol or a Blunderbuſs, or the like, may God ſink and ſtrike me dead; and the Bleſſed Sacrament, which I intend to receive, be my Curſe and Damnation, if I knew of King *James*'s Coming, till after the whole Town rung of it: I had no hand in the Invaſion; and, beſides my Abhorrence of Introducing Foreign Force, I deſire your Lordſhip and the Jury to conſider the Circumſtances of my Caſe, that I had but a very ſmall Allowance from my Father, and therefore it is not probable I ſhould take upon me to joyn with my Lord of *Ailesbury*, and my Lord *Montgomery*, and thoſe other Gentlemen, to ſend *Chernock* into *France*, to invite over a Foreign Force: And I call God to witneſs I had no hand in it. I beg your Lordſhips Pardon for all this Trouble; I would not hurt Mr. *Porter*'s Evidence, for the Reaſons that I have told you; but this is for my Life, and I don't ſo much value that as I do Truth and Sincerity; and I ſhall receive the Bleſſed Sacrament, if I dye, that I never did do ſo. Indeed, I never did take the Oaths, nor did I ever refuſe them, becauſe they were never

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offer'd me; but I wou'd take the Oaths now if they were offer'd me. My Lord, I beg your Pardon for this Trouble.

L. C. J. *Treby.* Have you done, Sir? Have you ſaid all you would ſay?

Cook. Yes, my Lord.

L. C. J. *Treby.* Then, you Gentlemen of the King's Councel, will you conclude?

Mr. Sol. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Councel in this Caſe for the King, and I could have been very glad that this Gentleman's Defence that he has made had been ſtronger than in truth it has been: And I ſhould have been very glad too that his Councel had been able to have made it better for him; but that he and they may be ſatisfied as much is done as the Caſe will bear; they have had all the Liberty in the World to make his Defence they could deſire, nay, more than in ſtrictneſs could be allow'd them.

Gentlemen, our Evidence is very poſitive againſt the Priſoner at the Bar, and for the *Higheſt Crime* that the King's Subjects can be guilty of, by the Confeſſion of the Gentleman himſelf, and of his Councel. We have, I ſay, two poſitive Witneſſes againſt him; they ſay, They are not Legal ones: I muſt own, if we have not two Witneſſes, we have never an one; for whatſoever falſifies Mr. *Goodman*'s Teſtimony, falſifies whatſoever Mr. *Porter* has Sworn. Now, the Evidence that Mr. *Porter* has given againſt him, is this: He ſays, There was to be a Meeting at the *Kings-head Tavern* in *Leaden-hall-ſtreet*, and there they conſulted of the Methods to bring back K. *James* hither; and it was thought the beſt way to ſend to King *James* to invite the *French* King to ſend 1000 Horſe, 1000 Dragoons, and 8000 Foot, to land here in this Kingdom, where they would meet him with 2000 Horſe. They pitch'd upon a very proper Meſſenger, Mr. *Chernock*, a Perſon that has been attainted, and has ſuffer'd for *High Treaſon*; he was to be ſent into *France* upon this Errand; Mr. *Cook*, the Priſoner at the Bar, was one of the Perſons that were there at that time, and he was conſenting to this Meſſage; and Mr. *Porter* gives you a particular Token relating to the Priſoner, for he remembers the Priſoner did kneel upon the Chair, and lean'd his Elbows upon the Table when he conſented.

Mr. *Porter* goes further, and tells you, That Mr. *Chernock* would have another Meeting, to know and ſee whether all the Company were of the ſame mind they had been; and That afterwards they met at Mrs. *Mountjoy*'s Houſe, and there the Priſoner at the Bar was preſent, and conſenting to the ſame thing: Thereupon Mr. *Chernock* went into *France*, and came back again, and ſaid, The *French King* could not ſpare ſo much Force. Mr. *Goodman* gives the ſame Evidence that Mr. *Porter* had given: It's true, he was not at Mrs. *Mountjoy*'s Tavern, but he tells you withal, He ſpoke with Mr. *Chernock* when he came back from *France*, and *Chernock* return'd him the ſame Anſwer that he did to Mr. *Porter*, That the *French King* could not ſpare ſo many Forces. This is the Evidence in ſhort, Gentlemen, that is given againſt the Priſoner; and if this Evidence be true, then is he guilty of the Crime for which he is indicted.

Againſt theſe Witneſſes they have produced, firſt, a Record of Conviction againſt Mr. *Goodman*, and that was for hiring one *Amadeo* to poyſon the Duke of *Grafton*, and the Duke of *Northumberland*: They have produc'd the Record, whereby it appears, he was Convicted and Fined 1000 *l.* and was to find Security for the good behaviour during Life; and he was to lye in Priſon till the Fine paid, and Security given: But it happens, in that very Record it appears there was Satisfaction acknowledg'd upon that even

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the very next Term; and that gives a great deal of Suſpicion to believe, that the Evidence that was given was not much credited; for, tho' the Councel for the Priſoner has ſaid, that it was the Payment of the 1000 *l.* that was the Satisfaction; no, it is not ſo, it is a Satisfaction of the whole Judgment, for finding Security as well as the Fine. They ſay he was not able to pay the Fine; and there is nothing appears of the other parts of the Judgment being complied with, but the whole Judgment is ſet aſide.

But all this does not make a Man *no Legal* Witneſs; if they thought this Conviction tended to ſet aſide his Evidence, they would have produc'd it at another part of the Tryal, than where they did: That is, when Mr. *Goodman* was firſt call'd to be Sworn as a Witneſs, then they ſhould have produc'd this Record, and ſaid he had been no Witneſs: But they knew well enough that that was no Exception againſt the Legality of his Evidence, but tends only to his Credit, and nothing elſe. Now, tho' it be a black Crime to endeavour to poyſon another, yet that does not totally deſtroy any Man's Credit; if it did, then the other Gentleman, Mr. *Porter*, has confeſs'd himſelf Guilty of a greater Crime than that for which Mr. *Goodman* is Convicted by this Record; for, he owns himſelf one that was in that Deſign of Aſſaſſinating the King. And Mr. *Goodman* owns himſelf too Guilty of a greater Crime that what's objected to him, which is that of *High Treaſon*; and, I hope, if he may be believ'd, when he owns himſelf guilty of *High Treaſon*, which is a greater Crime than poyſoning a private Subject; or guilty of ſuch a Deſign as the Aſſaſſination of the King, which Mr. *Porter* has charg'd himſelf with, and notwithſtanding which they have not offer'd that as an Exception againſt Mr. *Porter's* Evidence, (for they very well know, his Evidence has been Receiv'd and Credited:) Mr. *Goodman* may be Credited, tho' Guilty of the Crime objected to him: And the conſtant Practiſe in all Tryals of this kind hath been, that it does not take away the Witneſſes Evidence, however it affects his Credit, which in this Caſe is ſupported by the Concurrent Teſtimony of Mr. *Porter*. And ſo then, I ſay, we have two Legal Witneſſes, (notwithſtanding all the Exceptions) to prove Mr. *Cook* guilty of the Crime for which he is Indicted.

Then they go on further, and produce other Witneſſes: Firſt, they produce one *Edwards*, a Perſon that is Committed for *High Treaſon* himſelf, and under Suſpicion of his being to be one of thoſe that was to have a hand in the Aſſaſſination; but his Evidence goes no further, than that Mr. *Goodman* told him he was to be a Witneſs againſt Mr. *Cook*, and either he the Witneſs, or Mr. *Cook* muſt ſuffer; and, That it was a fooliſh thing to be Hang'd. My Lord, there is nothing at all in this matter that takes away Mr. *Goodman's* Evidence: It is very plain Mr. *Goodman* had forfeited his Life, and muſt do ſomething to ſave it, and I think he could not do a better Service to entitle himſelf to the King's Mercy, than to diſcover thoſe that were equally guilty with himſelf. 'Twas his Duty to have done it, if he had not been in Danger; and if he hath done no more than what was his Duty, I hope that is no Objection againſt his Teſtimony.

They have produced likewiſe a Drawer of the *Kings-head Tavern*, one *Crawford*, and he ſays, he attended in this Room while this Company was there. But then he goes a little further than the Councel or the Priſoner would have had him; for they called him to prove, that Mr. *Goodman* was not there when my Lord of *Ailesbury*, my Lord *Montgomery*, and Mr. *Cook* were there. But when the Drawer comes, he knows nothing of Mr. *Goodman's* being there at all: He ſays, Mr. *Cook* was there, but not Mr. *Goodman*;

and yet he does acknowledge, that Mr. *Goodman* might be there, and he not ſee him come up. He acknowledges he attended upon other Company as well as this; ſo that it is plain in the nature of the thing, and his own Confeſſion, that *Goodman* might be there. This cannot take off the poſitive Evidence of Mr. *Goodman* and Mr. *Porter*, who both ſwear, That *Goodman* was there.

But then they produce another Drawer, and that is one *Huntley*; and he gives the ſame Account, only indeed he ſays, He was there all the while they were at Dinner: But that is nothing, becauſe it is acknowledg'd both by Mr. *Porter* and Mr. *Goodman*, That he was not there at Dinner-time, but he might be there after Dinner, and yet *Huntly* could not ſee him at Dinner: He tells you likewiſe, he paſs'd up and down in the Room afterwards, and did not ſee Mr. *Goodman* there; but yet he might be there, and he not ſee him.

Then they produce the Maſter of the Houſe, and he gives much the ſame Evidence in effect which his Servants do, That he did not ſee Mr. *Goodman* there all the while; but he ſays ſomething that is a little incredible; He can be poſitive that Mr. *Goodman* was not there while my Lord of *Ailesbury* was there, but he cannot be poſitive that he was not there afterwards. He tells you, he met my Lord of *Ailesbury* and my Lord *Montgomery* upon the middle of the Stairs coming down, and he is ſure Mr. *Goodman* was not in the Room at that time. Now, is that poſſible that he could be ſure of that, when he owns, (and cannot but own) That Mr. *Goodman* might go into the Room and he not ſee him? So that he has made a ſtrain in his Evidence that it is very little to be Credited, which was not deſigned ſo much for the advantage of Mr. *Cook* as for the advantage of ſomebody elſe: And, in itſelf, it is almoſt an impoſſible thing that it ſhould be true, by what he offers as the Reaſon of his Evidence.

But then, Gentlemen, you are to conſider, that all theſe three Witneſſes, if they ſwear true, do falſifie not only Mr. *Goodman*, who ſwears, That he was there; but they likewiſe falſifie the Evidence of Mr. *Porter*, and for that Reaſon I ask'd Mr. *Porter* the Queſtion, Whether he did not give the ſame Evidence againſt Sir *John Friend*? And if what he ſwears now be not true, neither was it true when Sir *John Friend* was Try'd, for he was the only Witneſs at that time againſt Sir *John Friend*, for this meeting; and therefore theſe mens Teſtimony tends to overthrow Both Witneſſes as well as One: And I muſt tell you, that if Mr. *Goodman* be not a Legal Witneſs, becauſe he has ſworn a thing that is not true, then Mr. *Porter* is not a good Witneſs, who has ſworn the ſame thing, *viz.* That Mr. *Goodman* was there; and then you ought to acquit the Priſoner, becauſe there is no Witneſs againſt him at Law; for, there is the ſame Evidence againſt Mr. *Porter* that there is againſt Mr. *Goodman* as to this matter.

Then, Gentlemen, as for the Character of Mr. *Cook*, they ſay he is a good *Engliſh Proteſtant*, I hope he is ſo; but it is plain, that *Religion* does not vary the Caſe: 'Tis within the reach of every man's memory that is here, that the ſame things have fallen upon other Gentlemen that have had the ſame Character, particularly Sir *John Friend* and Sir *William Parkyns*, who both ſaid the ſame things, in the ſame place, That they were *True Proteſtants* of the Church of *England*. But that is no manner of Evidence that will be of weight againſt Poſitive Oaths.

Now, Gentlemen, it is fit likewiſe you ſhould reflect upon another thing: What is it that ſhould engage Mr. *Porter* and Mr. *Goodman*, or invite either of thoſe two Gentlemen to give a Falſe Evidence againſt the Priſoner at the Bar? It does not appear that there was any Injury done by him

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to them, to provoke them, to it; ſo that it could be for nothing but for the ſake of Truth.

It has been further ſaid on the behalf of Mr. *Cook*, That he Abhorred the *French*, and any *Invaſion* upon his Country, and the like: It is a matter that is eaſily ſaid; and it has been ſaid by others that have been in the ſame Place where he now ſtands; That they hated all Plots, and they might puniſh them if ever they caught them. But theſe are only Sayings, and nothing elſe. If there can be any Conſtructions made of the Evidence given by theſe two Witneſſes, that does not directly prove the Indictment, then the Priſoner ought to be Acquitted: But if there can be no other Conſtruction made, but only, That there was a plain Deſign to ſend *Chernock* into *France*, to King *James*, to perſwade him to prevail with the *French King*, to come and Invade us with a Foreign Force: And if our Witneſſes are Legal Witneſſes, (as, I doubt not, my Lords the Judges will tell you they are; if there be no Exception to the Credit of *Goodman*, but only that he was in ſuch a Deſign of Poyſoning the two Dukes, which is really no Objection of Diſcredit to his Teſtimony;) then, with Submiſſion, I think there is no room left for you, Gentlemen of the Jury, to doubt, but that the Priſoner is as Guilty of this Crime laid to his charge, as any others that have been Try'd and Condemn'd for the ſame. And ſo, Gentlemen, I leave it to you.

L. C. J. *Treby*. Mr. *Conyers*, and Mr. *Cowper*, will you ſay any thing to this matter.

Mr. Conyers and *Mr. Cowper*. No, my Lord, we ſubmit it entirely to your Lordſhips Direction; we have done on all ſides, we think.

L. C. J. *Treby*. Gentlemen of the Jury, the Priſoner at the Bar, Mr. *Cook*, ſtands indicted here for *High Treaſon*; there are laid in the Indictment two ſorts of Treaſon; the one is, Compaſſing and Imagining the Death of the King; the other is, adhering to the King's Enemies. The Evidence to prove theſe Treaſons ſeems to be joynt; for, as to that of Compaſſing and Imagining the King's Death, as well as to the other, the Overt Acts are meeting and conſulting about the Treaſon, and then agreeing and reſolving to invite and procure an Invaſion from *France*, and to meet that Invaſion with an Inſurrection here. And the Evidence is apply'd *entirely* to prove theſe *Acts*.

Gentlemen, that theſe are proper *Overt Acts* of Compaſſing the King's Death, I need not inform you, the Law is very well known; and the Priſoner's own Councel do acknowledge, that theſe are ſufficient *Overt Acts* of Compaſſing and Imagining the King's Death: So that all which they Defend him by is, the Improbability of the Teſtimony given againſt him.

Now, Gentlemen, you are to conſider and weigh well the Evidence that has been given. By Law, it is true, as they obſerve, there muſt be *Two* Witneſſes. Here is no defect of Number; that's acknowledg'd too, here are two Witneſſes; but the Queſtion is, whether here be two Witneſſes that deſerve *Credit*, and upon whoſe Teſtimony you can find that the Priſoner is Guilty. The Witneſſes, Gentlemen, are Mr. *Porter* and Mr. *Goodman*.

Firſt, For the matter of their Teſtimony, it is poſitive from them both; that you'll do well to obſerve. Mr. *Porter* tells you, That in *May* laſt, (which is now juſt a Twelve-month) there was a meeting of Eight Perſons, that is, my Lord of *Ailesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Parkyns*, Sir *John Friend*, Mr. *Chernock*, Mr. *Cook* the Priſoner at the Bar, and the Witneſs himſelf Mr. *Porter*; and this was at the

the *Kings-head Tavern* in *Leaden-hall-ſtreet*, and there theſe Eight dined, and this was in order to conſult about an Invaſion, together with an Inſurrection intended to be made for the Reſtoring of the late King. After Dinner comes in Mr. *Goodman*, he ſays, and then they purſued this Conſultation, and came to a Reſolution, to ſend Mr. *Chernock* into *France*, and the *Meſſage* was agreed upon which he ſhould carry; and he was to go to the late King, and ſollicite him to obtain 10000 Soldiers from the *French King*, whereof 8000 ſhould be Foot, 1000 Horſe, and 1000 Dragoons. Theſe were to make up the 10000 men to invade this Kingdom. And they reſolved alſo, when this Force ſhould land, they ſhould meet and aſſiſt this Invaſion with a joynt Force, that ſhould conſiſt of 2000 Horſe. And to Acquaint and Aſſure him of this was the *Meſſage*. But, he ſays, That Mr. *Chernock* was very cautious in it, and would not preſently go upon this Errand, but he would have further Aſſurance that they were in earneſt, and would make good what they did ſend him to propoſe, therefore he would have a ſecond meeting; & a ſecond meeting was had, & that was at Mrs. *Mountjoy*'s Tavern, and there they did renew the ſame Reſolution, and there were preſent my Lord of *Ailesbury*, Sir *William Parkyns*, Sir *John Fenwick*, Sir *John Friend*, Mr. *Chernock*, the Priſoner at the Bar, and himſelf; he does not know or remember whether my Lord *Montgomery*, or Mr. *Goodman* was there. He ſays, Mr. *Chernock* did accordingly go into *France*, and he did return and bring back King *James*'s Thanks to them, but their Deſire could not be comply'd with; and he had his Share of the Complements.

Now comes Mr. *Goodman*, & he ſays, That about the ſame time, *viz. Mid-May*, Mr. *Porter* acquainted him, there would be a meeting of ſome of K. *James* s Friends, at this Tavern in *Leaden-hall ſtreet*. He ſays, That he did tell Mr. *Porter*, he doubted he ſhould not be there at Dinner, but he would come as ſoon as he could after Dinner; and according to appointment, he did come after Dinner, and there was this Conſultation and Reſolution that Mr. *Porter* ſpeaks of, and ſays, That Mr. *Chernock* afterwards told him, he had been in *France* with the late King, and brought back the ſame Anſwer that Mr. *Porter* ſpeaks of; and he had the Honour of Thanks from the late King too.

Gentlemen, I muſt obſerve one thing to you, which does go very much towards the confirming what theſe Witneſſes ſay, and that is the Agreement in their Teſtimonies, tho' they were examin'd *Apart* at the Deſire of the Priſoner: You will find they agree in theſe ſeveral Circumſtances, in the Time, that it was this time twelve-months; in the Place, that it was at this Tavern; in the Number of Perſons that were there, which was Eight before Mr. *Goodman* came in; in the number of Horſe, Foot, and Dragoons that were to be brought from *France*, and in thoſe Horſe that were to meet them here; and beſides, in thoſe words of Diſcourſe upon the Conſultation and the Reſolution. And there is one Circumſtance more in which they do agree, and which is very particular; That when they came to deliver their Conſent to this *Meſſage* that Mr. *Chernock* was to carry, the reſt ſate, and Mr. *Cook* the Priſoner did kneel upon the Chair, and lean'd upon the Table. And this both of them do agree in. And after all the many Queſtions ask'd in their ſeparate examination, I do not find they diſagree in any Part of their Evidence. So that, Gentlemen, there can remain no Queſtion now, but Whether theſe two Witneſſes are men of Credit; or, whether there has been oppoſed to them any ſuch Evidence as will make you believe, that (if not both) at leaſt one of them has forſworn himſelf. They do produce nothing againſt Mr. *Porter*, whatſoever may have been produc'd at former Tryals againſt his Credit: Perhaps what has been before, has ſatisfied the Objectors,

and

there is nothing appears againſt his Credit ; but he is not only a *Competent* but a very clear, good, credible, and undoubted Witneſs.

But againſt Mr. *Goodman* they offer ſeveral things which they ſay amount to a violent Preſumption, that he is not to be look'd upon as a credible Witneſs : And firſt, they produce a Record of a Conviction upon an Information againſt him, for attempting to poiſon two Noble Dukes : This he was convicted of, and fin'd 1000 *l.* and ordered to find Sureties for his good Behaviour during his Life. But, to this it is anſwered, that it appears in the ſame Record, that Satisfaction was acknowledged of the 1000 *l.* and all the reſt of the Judgment the very next Term, and he was forthwith diſcharged, and that without paying the Mony, which ('twas obſerv'd) the Priſoner's Counſel ſaid Mr. *Goodman* was not able to pay at that time, no more than he could 20000 *l.* and thereupon the King's Counſel ſay, that the Government was convinc'd that he was wrong'd by a cauſeleſs Proſecution, and the Evidence againſt him was found not to be credible. And beſides, Mr. *Goodman* ſtands pardoned by ſeveral Acts of Pardons, as well as other Subjects.

Then they produce one *Edwards*, who is a Priſoner here, and committed for Suſpicion of High Treaſon, and for Treaſonable Practices: He is, no doubt of it, a Witneſs for all that: For that is but an Accuſation upon him, and does not take away his Credit. He tells you of a Diſcourſe that he had with Mr. *Goodman*, and that *Goodman* ask'd him when the Priſoner was to be try'd ; and he told him he wou'd be try'd ſuch a Day ; and when it was ask'd what it was for, it was anſwer'd, not for the Aſſaſſination, but for ſending Mr. *Chernock* into *France?* He ask'd then who were the Witneſſes againſt him? Mr. *Goodman* ſaid, Mr. *Porter* and himſelf. And further ſaid, that he underſtood that Mr. *Cook* had ſworn againſt him (though he would give an Account of no body elſe) and had no Pardon, and either he muſt hang, or himſelf. And then he talk'd lightly of the Buſineſs of hanging, and ſaid it was a fooliſh thing to be hang'd, for all that People wou'd ſay, was, that ſuch an one hang'd *handſomly*, or dyed *bravely*. This indeed is a ſort of Diſcourſe as if Mr. *Goodman* did apprehend himſelf in Danger from Mr. *Cook*'s Evidence ; and yet I cannot ſee that it does at all falſifie the Evidence of Mr. *Goodman:* He may be a true Witneſs, and yet he might ſay he was to give Evidence againſt Mr. *Cook*, and it was in Mr. *Cook*'s Power to give Evidence againſt him, and that truly ; and if both were in the Guilt, they were in Danger of one another. But for a further Anſwer, the King's Counſel have produced Mr. *De-la-rue*, who ſays, that he knew Mr. *Edwards*, and that he was a Scotch Man, and reputed Chaplain to the Viſcount of *Dundee*, that he went formerly by the Name of *Dowglas*, and by that Name he was ſet down and deſcribed in the Liſt that Mr. *Chernock* ſent to Captain *Porter* ; and to that Name he anſwer'd in the *Preſs-yard* lately. Now it is certain, that Mr. *Chernock*'s putting of his Name in that Liſt, is no Evidence of his being guilty in Mr. *Chernock*'s Treaſon. But his going by two Names doth juſtly lay him under ſome Suſpicion. But the Evidence that the Priſoner ſeems to rely upon moſt, is what Evidence has been produc'd againſt Mr. *Goodman* in that Point of Fact, by the Maſter and the two Drawers ; the firſt of the Drawer's Name was *Crawford*, and he does tell you, that about 12 Months ago there was this Company at Dinner there : My Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Friend*, Sir *John Fenwick*, Sir *William Parkyns*, Captain *Porter*, Mr. *Chernock*, and the Priſoner, though he did not then know his Name, or the Name of one or two more of them. I obſerve by the way, that his Teſtimony ſo far does verifie theirs, that there were eight of them there, but he ſays he did not ſee Mr. *Goodman* there, nor any but thoſe that dined there. And my Lord of *Aylesbury* went away, as he thinks, about four a Clock. He cannot ſay that the Priſoner was there, or was gone at that time before Mr. *Goodman* came in ; for he did not ſee Mr.

Goodman there at all, he was not in the Room all the time, but he was to and fro attending till my Lord of *Aylesbury* and my Lord *Montgomery* went away in a Coach that was called, and when they were gone, the reſt of the Company ſtaid there a good while; being urged to tell how long, at laſt he ſaid it was dark, and that agrees with Mr. *Porter*, who ſays, it was about nine a-Clock when they went away. He ſays he was there once or twice after my Lord of *Aylesbury* went away, but he never ſaw Mr. *Goodman* that he remembers at all, till laſt *Saturday*, in all his Life. As to this the King's Counſel ſay, that it is only a *negative* Evidence, and in which a Man cannot be abſolutely *poſitive*, but can only ſpeak according to his Obſervation and Memory, which might not be perfect, and Mr. *Goodman* might be there in the mean time of his going in and out: That is poſſible; and ſo it muſt be left to you to conſider of it.

Then there is *Huntly* the other Drawer, and he ſays my Lord of *Aylesbury* went away about that time, and that he did not ſee Mr. *Goodman* there at all, nor ever in his Life till now; neither does he remember that any body came to them after Dinner, and if any freſh Man had then come in, he thinks he ſhould (going often in to them) have known him; and ſays, that he attended this Company only: And he had ſeen Sir *John Friend* and Sir *William Parkyns* there before.

Then Mr. *Cock*, the Maſter of the Houſe was produced, and he names all the eight Perſons that did dine there, and ſo far he confirms the King's Evidence: He thinks that my Lord of *Aylesbury* and my Lord *Montgomery* went away privately (as it ſeems they had come) in a Hackney Coach, and that it was about 4 a-Clock; and he ſays, he did not ſee Mr. *Goodman* there, and he does not know that he ever ſaw him till now: But when he was croſs examined by the King's Counſel, he does acknowledge that he might poſſibly come in after Dinner, and before my Lord of *Aylesbury* went away, and he not ſee him, becauſe he was not there all the time; he ſays Sir *John Friend* uſed to dine at his Houſe, and came to his Houſe once a Week; and he had ſeen ſome of the reſt, but they did not frequent his Houſe as Sir *John Friend* did: He ſays, the Company din'd about 2 a-Clock, and the laſt of them ſtaid till about 8 or 9, and that the Door was ſhut as is uſual when Company is in a Room, but no body was forbid to come there.

But to eſtabliſh the Credit of the Evidence on the King's part, they did produce Mr. *Goodman* and Mr. *Porter* again: Mr. *Goodman* does acknowledge ſo far to be true, that my Lord of *Aylesbury* went away firſt; but ſays, that himſelf was not wholly a Stranger to this Houſe, for he had dined there four or five times with Sir *John Friend*, and particularly one time, he being ſick, and asking for ſome Brandy, the Maſter of the Houſe ſaid he would help him to ſome of the beſt in *England*, and Mr. *Goodman* would have bought ſome of him. But the Maſter ſeems not to own that, and ſays, he does not remember any thing of it.

But then comes Mr. *Porter* again, and he ſays poſitively, that Mr. *Goodman* was there, and that he did ſpeak with the Company, and complemented my Lord of *Aylesbury* when he went away, and went part of the way towards the Stairs with him; and he does well remember it by this Token, that when Mr. *Porter* was told Mr. *Goodman* was below, he mentioned him in the Company as a truſty Man, that was fit for the Converſation; and then Mr. *Porter* went and fetch't him up, and Mr. *Goodman* was there near two Hours, and they diſcours'd all this matter in that time in the Preſence of the Priſoner and the reſt; and he ſays it was about ſix a-Clock before my Lord of *Aylesbury* and my Lord *Montgomery* went away, and then there was Opportunity enough for this Diſcourſe, and Conſult that they ſpeak of.

The Priſoner has offered another ſort of Evidence: Firſt, the Confidence of his own Innocence, that he was abroad three Weeks after this Conſpiracy

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was diſcovered ; and they have produced Mr. *Treganna*, Mr. *Peachy*, and Mr. *Nichols*, who prove that he never abſconded, but was abroad and appeared openly (for three Weeks after) till ſuch time as he was taken. This the King's Counſel ſay is no proof that he is not Guilty, and their Evidence untrue. They ſay he might have a Confidence, and the rather becauſe he is not charged with the Aſſaſſination ; for, at that time theſe Witneſſes ſpeak of nothing was diſcovered and publick but the Aſſaſſination ; for it was before Sir *John Friend*'s Trial ; and then was the great Diſcovery of the Secret of the Invaſion.

Then he ſhews further as to his Converſation, that he is a Man of a very ſober Life, never was known to Swear, that he Drinks but little, and is a *Godly* Man, and often ſays his Prayers. As to that, the King's Counſel on the other ſide tell you, that has been pretended to by other People too ; and the Queſtion is not about *Religion*, but *this Fact* that you are now to try. Whether he be ſo Religious or no as he pretends, or whether he be Sincere in his Devotion, that is not ſo much the matter now, but the Queſtion is, whether he has offended in this Kind as he ſtands Accuſed. They produce a Gentleman, one Mr. *Hammond*, and he ſays that he is a very Conſciencious Man, and particularly is a great Lover of his Country ; and he has often heard him declare a Deteſtation of an Invaſion by a French Force, and wiſh Succeſs to the Fleet ; but *that* which he remembers chiefly, was about the *time* of the Diſcovery of this Plot. The King's Counſel anſwer to this, that a man may uſe ſuch kind of Expreſſions, perhaps to Cover his Guilt ; and in the Reply to Sir *Barth. Showers* Obſervations it was taken notice of by Mr. *Solicitor*, (what we all cannot but remember) that the like Evidence was given as to Sir *John Friend*, that he did deteſt an Invaſion, and was preſent at the Common Prayer when King *William* was pray'd for, and declared againſt Plots ; and that if they catched him in the Corn they might put him in the Pound. Theſe things a man might ſay, and it is the lighteſt Evidence that can be given, being Diſcourſes out of Mens own mouths, who will never proclaim their own Guilt ; and therefore it is the weakeſt Defence that can be offered. But Gentlemen, you are to conſider the other Evidence that has been produc'd by the Priſoner, given by ſeveral Witneſſes, and who are upon their Oaths now as well as the King's Witneſſes. And his Counſel ſay their Witneſſes, but particularly the three upon whom they chiefly rely, have no Objection made out againſt them ; and no man's Teſtimony ought to be *Preſumed* to be falſe. And it muſt be taken notice of, that they can ſpeak only according to their Belief, grounded on their Obſervation and Memory, that they did not ſo far as they obſerved or remember, ſee Mr. *Goodman* there, as 'twas moſt probable they ſhould if he had been. But 'tis poſſible they might overlook or forget ; the rather for that they were not of the Company, but in and out, up and down ; and Mr. *Goodman* was not there at Dinner when their Attendance was fixt and conſtant.

It ought to be conſidered alſo, that here are ſeveral Circumſtances, ſome of which ſeem very pregnant. It is agreed on all hands, that the Priſoner Dined there with thoſe other ſeven perſons, concerning Four of whom we muſt conclude nothing ; but concerning three of them we in this Court may take notice, they are Attainted of High Treaſon, and ſo it is evident that the Priſoner was for a long time a Companion of three Traytors, and had a Converſation with them. I do not find that he had any Occaſion to be there ; nor any of the reſt of the Company. Concerning my Lord of *Aylesbury*, indeed it is ſaid he propoſed to treat about a Hogſhead of White Wine. But that ſeems to be caſual, and not the end of his coming and Dining with this Company there. But, be that how it will, that relates to his Lordſhip alone. But, for the others, I do not find they do pretend any Occaſion of meeting there ; and therefore

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it leaves it the more ſuſpicious: And 'tis the more ſo, becauſe it was managed ſo privately and cautelouſly. They were not attended according to their Qualities. The Lords went away together in a Hackney-Coach that was called, as they had come thither in another. The reſt thought fit to ſtay there till it was dark; and as ſoon as it was ſo, went away. There was ſome extraordinary Cauſe for all this. It did import the Priſoner to ſhew, that it was for ſome good Cauſe and Purpoſe.

And further, it is obſervable that this Houſe was a place which, as the Maſter ſays, none of this Company did uſe to reſort to, except Sir *John Friend*; which makes it probable (this being a Houſe that Sir *John Friend* frequented and none of the others) that *He* beſpoke this place, and brought the reſt thither: And if it were ſo, that makes it more probable that there was ſuch a Treaſon there to be hatch'd, as is evidenced by the King's Witneſſes; for you may remember, and it appears by the Record in this Court, that Sir *John Friend* was indicted and attainted (not for the Aſſaſſination, but) for the Treaſon for which the Priſoner is now a trying, an Invaſion that was to be ſupported with an Inſurrection. Now if Sir *John Friend* was chiefly acquainted with this Houſe, and brought this Company together, it is very probable it was about this buſineſs which Sir *J. Friend* was ſo concerned in. And that he is Attainted for it, appears upon the Record before us; which ſhould be read, but that the Priſoners Counſel admit it, and are ſo far ſatisfied in it, that they won't Arraign the Verdict; nay, they did acknowledge that there was a Plot; and there was no doubt of it, there was *ſuch* a Plot.

Now then Gentlemen, here it is certainly proved by theſe two Witneſſes, (and not gainſaid by the Priſoners own Witneſſes,) that there was ſuch a Meeting, and that the Priſoner was there; and they both have poſitively Sworn that this Treaſon was committed there. You have heard what has been objected to their Credit; they have delivered their Teſtimony upon their Oaths; and ſo, Gentlemen, are you upon your Oaths: If you are ſatisfied, and can take it upon your Conſciences that theſe two Witneſſes are, or any one of them is, forſworn (if ſuch diſtinction can poſſibly be made in this caſe) then you are to acquit the Priſoner; but if you are ſatisfied, and think they have ſworn true, you are to find him Guilty.

Mr. *J. Rokeby*. Nay, if one be forſworn both are; for the Evidence is entirely in all parts the ſame; and if Mr. *Goodman* be perjured, Mr. *Porter* is ſo too.

Sir *B. Shower*. Forſworn and Perjured are hard words; we only ſay miſtaken.

Mr. *J. Rokeby*. Well, that Objection goes to one as well as t'other.

L. C. J. Treby. It muſt be ſo, ſince they ſpeak of the ſame joint matter, *viz.* their being together in Company. If Mr. *Porter* ſays true when he ſwears that Mr. *Goodman* was there with him and the reſt, Mr. *Goodman* muſt ſay true when he ſwears that he was there with Mr. *Porter* and the reſt. There was one thing that I forgot: Sir *B. Shower* obſerved, that it might be an Invention of Captain *Porter*, becauſe he fixeth it in point of time to the Month of *May*, that he does not ſay it was in *April*; for that then it would be within the Pardon, which extends to *April* 29. laſt year; nor would he lay it in *June*, for then he was in *Newgate*, and others of them were diſperſt by reaſon of a Riot committed in *Drury-lane*; and ſo there was no Month left but *May*: And this Sir *B. Shower* alledges, was a piece of Skill and Contrivance. But, really, this is a piece of Ingenuity in himſelf. For, beſides that the King's Witneſſes affirm poſitively that it was in *May*, and remember it by a certain token, *viz.* That it was within a very few days after the King went *beyond Sea*, one or two of the *Priſoner*'s Witneſſes (*Crawford* I am ſure) did ſay that this Meeting was this time twelve-month, and you know we are now near mid-*May*.

Mr.

Mr. Serjeant *Darnall.* If you believe our Drawers for part, you muſt believe them for all.

Mr. Att. Gen. No, not ſo: My Lord ſpeaks only where they concur with our Evidence. It were ſtrange to expect we ſhould disbelieve or doubt what the Witneſſes on both ſides affirm to be true: But, I do not think it would be to the Advantage of the Priſoner, if what his Counſel propoſeth were agreed to, *viz.* that the Drawers (and their Maſter too) ſhould be believed for *All* they ſay, provided equally that the King's Witneſſes ſhould, in like manner, be believ'd for what they ſay. For, the main thing controverted is, whether Mr. *Goodman* were at this Meeting. Theſe Witneſſes for the Priſoner ſay, they did not ſee him there; at leaſt they do not remember it. Mr. *Porter* and Mr. *Goodman* himſelf ſay, he was there. Now, theſe things agreed, and admitted, would make a very conſiſtent clear Evidence, that Mr. *Goodman* was there, though the Maſter and Drawers did not obſerve, or do not remember his being there.

Then an Officer was ſworn to keep the Jury, who withdrew to conſider of their Verdict, and about three quarters of an Hour after they returned into Court.

Cl. of Arr. Gentlemen, anſwer to your Names: *Henry Sherbrook.*

Mr. Sherbrook. Here: And ſo of the reſt, *&c.*

Cl. of Arr. Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of Arr. Set *Peter Cook* to the Bar (which was done) *Peter Cook* hold up thy Hand (which he did) Look upon the Priſoner, how ſay you, is he guilty of the High Treaſon whereof he ſtands Indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements had he at the time of the Treaſon committed, or at any time ſince?

Foreman. None to our Knowledge.

Cl. of Arr. Then hearken to your Verdict as the Court has recorded it: You ſay that *Peter Cook* is guilty of the High Treaſon whereof he ſtands indicted, but that he had no Goods or Chattels, Lands or Tenements at the time of the High Treaſon committed, or at any time ſince to your Knowledge, and ſo you ſay all.

Jury. Yes.

Cl. of Arr. Gentlemen, the Court diſmiſſes you, and thanks you for your Service.

Then the Court adjourned till 5 a-Clock in the Evening.

Poſt Meridiem.

About ſix a-Clock, the Court being, by Proclamation, Reſum'd, the Priſoner convicted was brought to the Bar, in order to Judgment.

Cl. of Arr. Peter Cook, hold up thy Hand (which he did) thou ſtand'ſt convicted of High Treaſon, for compaſſing and imagining the Death of his Majeſty King *William* the Third, and for adhering to the King's Enemies; what canſt thou ſay for thy ſelf, why the Court ſhould not give thee Judgment to dye according to the Law?

Cook. My Lord Mayor, my Eyes are very bad, therefore I deſire your Lordſhip would be pleaſed to take this Paper, and that it may be read.

Cl. of Arr. Have you any thing to ſay in Arreſt of Judgment?

Cook. I deſire my Paper may be read.

[It was handed up to the Court, and then delivered down to Mr. Att. General and the King's Counſel, but not openly read.]

Mr. Recorder. Mr. *Cook*, the Court have read your Paper you ſent up, and have communicated it to the King's Counſel; if you have any thing to move in Arreſt of Judgment, this is your time, and we will hear you, but as for any Repreſentation of your Caſe to any others, that muſt be conſidered of afterwards, you are now called to your Judgment.

Cook. I did not know that I might offer any thing afterwards, but if your Lordſhips think fit to communicate that to my Lords Juſtices, I ſubmit it to you.

Mr. Recorder. Mr. *Cook*, there is nothing appears upon this Paper that is matter of Law, and ſo not ſerviceable to you now, and therefore what you deſire in it, the Court will conſider of afterwards.

Cook. I do not underſtand the Law, my Lord, but I have heard the Court ought to be of Counſel for the Priſoner, and I deſire I may not ſuffer by my Ignorance.

Mr. Recorder. I declare it, for my part, I know nothing that you can have any Advantage of in Arreſt of Judgment; if I did, you ſhould not loſe the Benefit of it, and you have had your Counſel aſſigned, who have pleaded for you without reſtraint; and if there had been any matter of Law that would have availed you in Arreſt of Judgment, no doubt, they would have laid hold of that Advantage for you.

Cook. I can't tell, my Lord, what is matter of Law.

Mr. Att. Gen. Your Lordſhip obſerves, they took all the Objections that they could to the Indictment, but there was none that they could fix.

Cl. of Arr. Then Cryer make Proclamation. (Which was done on both ſides of the Court.)

Cryer. Oyez, All manner of Perſons are commanded to keep ſilence while Judgment is in giving, upon pain of Impriſonment.

Cook. My Lord, may I have my Paper again?

Mr. Recorder. If you think it may be of any Service to you to leave it with the Court, you may do ſo; or if you deſire it, you ſhall have it again.

Cook. I deſire your Lordſhip to keep it.

Mr. Recorder. I will receive it, and it ſhall not be buryed, I aſſure you.

Cook. I don't hear what the Court ſays.

Mr. Recorder. You ſay you did not hear what was ſaid to you: If you deſire to have your Paper again, you ſhall have it, but if you deſire to have it communicated above, the Court will conſider it, and take care of that too.

Cook. I deſire your Lordſhip wou'd do it.

Then the Recorder proceeded to give Judgment thus.

Mr. Cook, I think it uſeful to the publick, and alſo at this time to you, to obſerve, that the Reign of the late King *James*, was throughout, one intire Deſign and Project form'd in Conjunction with the *French* King, totally to ſubvert our Religion, Laws, and Liberties, which grew ſo apparent to the Subjects of theſe Nations, in ſo many Inſtances of fatal Conſequence, manag'd in ſuch a Method, and advanc'd ſo far, that the People of theſe Kingdoms, of all Qualities, Ranks, and Degrees, did find it abſolutely neceſſary for the Preſervation of themſelves and the neighbour Nations now in Alliance with us, to pray in Aid of the then Prince of *Orange*, as a Perſon, not only nearly allied to this Crown; but alſo intirely in the Intereſt of theſe Kingdoms, and thoſe neighbouring Princes, and Countries that lay expoſed to the Violence and ambitious Inſults of *France*. And the Love which that noble Prince did bear, not only to us, but to our Neighbours alſo, diſpoſed him to embrace that Invitation, upon whoſe Arrival here, that *Predeceſſor*, from Motives that were inviſible, declin'd the Kingdom and the Government; and left the People to them-

themſelves; whereupon his preſent Majeſty was neceſſarily and *rightfully* placed upon that Throne he ſo well deſerv'd: And this is now that King, for whoſe Preſervation all good People have *aſſociated*, and ſpare neither Lives nor Treaſure to ſupport and to continue in the Government; and this is that King whom you have Traiterouſly conſpired, not only to dethrone, but alſo to deſtroy; and this is that People that you would have to ſwim in Blood, and loſe their Religion, Liberty, and Property. Theſe Matters need a Hiſtory to relate at large, I only touch them ſhortly, to move good Men to rejoyce in their Deliverance, and to move you ſeriouſly to reflect upon the Heinouſneſs of your Crime.

Mr. *Cook*, you are an Engliſh Man, and muſt needs know, that in this Place we frequently condemn to Death Clippers, Coiners, Thieves and Robbers, and other ſuch like Criminals, and that juſtly and neceſſarily too, for the Preſervation of the Innocent, and for the common Good. Of what Condemnation muſt you, and ſuch as you, be worthy then, who have ſo horridly endeavour'd and deſign'd the fatal Ruin and Deſtruction of your own native Country, and to render your fellow Subjects a miſerable Prey, and at the beſt to become Slaves and Vaſſals to a foreign Prince?

Let me alſo mind you, That nothing is more ſure, than that after this, you muſt receive a Judgment in another World; and if that paſs againſt you too, that Sentence will be moſt terrible, and your Sufferings without End: And therefore I do adviſe you to imploy the few Days you have yet to live, in Preparation for your future Happineſs, which cannot be duly done without a full Confeſſion of this, as well as other Crimes you have been guilty of; I therefore charge it to you, as your Duty, and leave it with you at your utmoſt Peril, that you honeſtly and faithfully diſcover all you know of this inhuman and traiterous Conſpiracy, and all the Perſons that you do know to be guilty of it: This will be the greateſt Service you can do in this World, and will be the beſt Preparatory Step that you can take towards a better. And,

Sir, there now remains no more for me to ſay, but to pronounce that Sentence on you which the Law directs. And that is this,

THAT *you*, Peter Cook, *be taken hence to the Place from whence you came; and thence be drawn upon a Hurdle to the Place of Execution, where you are to be hang'd by the Neck, and cut down before you be dead; that your Bowels be taken out, and your Privy Members cut from your Body, and both burnt in your Sight; That your Head be cut off, and your Body divided into four Quarters, which Head and Quarters are to be at the King's Diſpoſal; and God Allmighty have Mercy upon your Soul.*

Cook. I beg, if your Lordſhip pleaſe, that I may have my Relations and Friends come to ſee me, and ſome Divines, the better to prepare me for another World.

Mr. Recorder. Mr. *Cook*, if you'll give the Names of thoſe that you would have come to you, to the Officer, Care ſhall be taken in it; and you will not be denyed any reaſonable Helps that may be had for your Preparation for Eternity.

Mr. Att. Gen. It is not fit he ſhould be deny'd any reaſonable Help; but in the mean time there is reaſon for the Government to be cautious, upon the account of what has notoriouſly paſt in the Caſe of ſome others.

Mr. Recorder, If he give in the Names, it will be conſidered of, and Care taken that nothing be done, but what is reaſonable, and ſafe.

Then the Priſoner was taken from the Bar, and the Court proceeded to what was remaining of the Buſineſs of the Seſſions.

FINIS.